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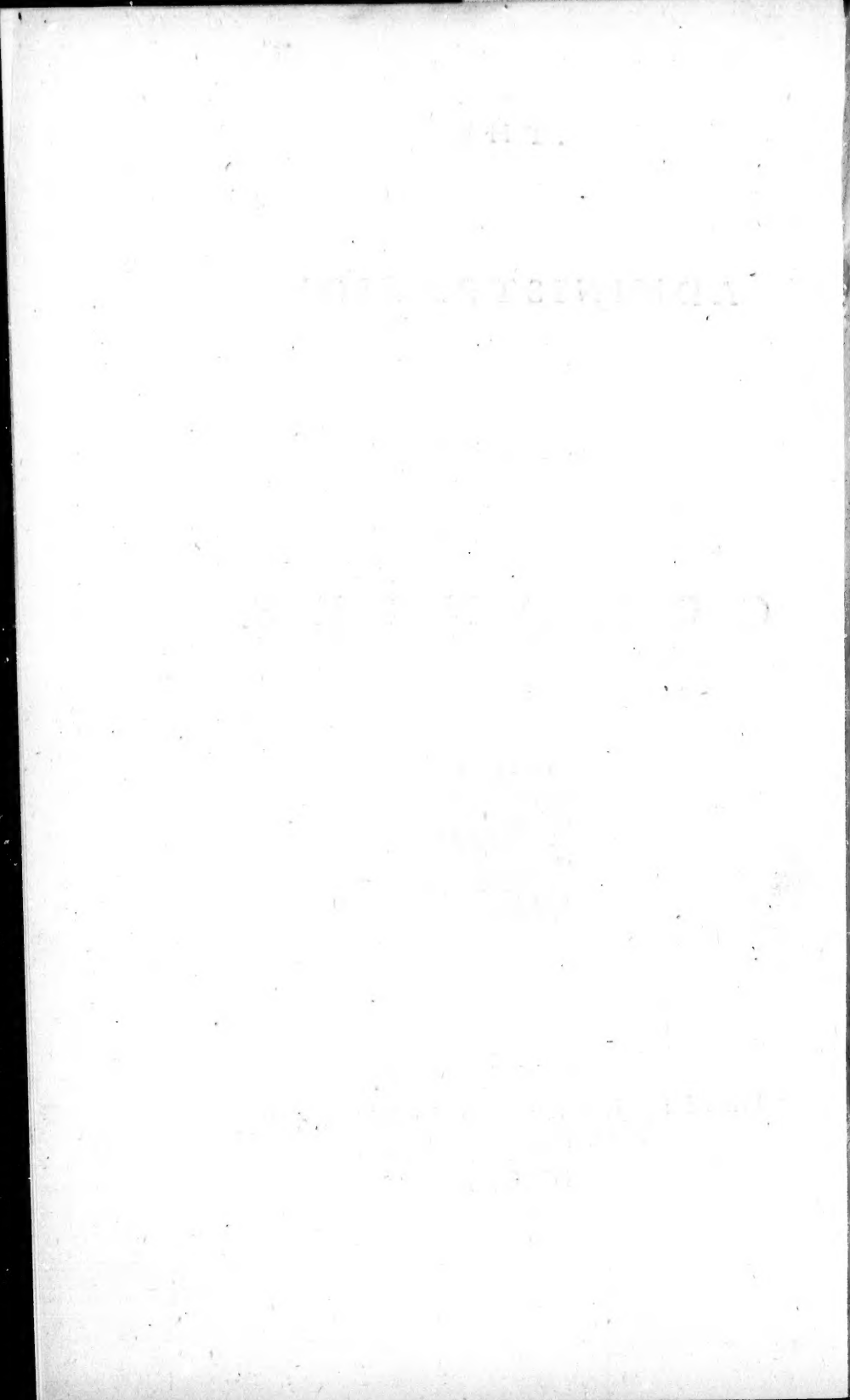
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THE
ADMINISTRATION
OF THE
COLONIES.

By Governor Pakenham. 1864.



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THE
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PART I.

THE several changes in interests and territories, which have taken place in the colonies of the European world on the event of Peace, have given a general impression of some new state of things arising. One cannot but observe, that there is some general idea of some revolution of events, beyond the ordinary course of things; some general apprehension, of something new arising in the world; of some new channel of business, applicable to
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new powers;—something that is to be guarded against, on one hand, or that is to be carried to advantage on the other. There is an universal apprehension of some new crisis forming: yet one does not find any where, in all these various impressions of the matter, any one precise comprehensive idea of this great crisis; and consequently, all that is proposed, is by parts, without connection to any whole; in temporary expedients without general reference to that eventual state of things which may be the effect thereof; with regard only to particular branches, that may be a foundation to some special advantages, without any systematical police, directed to the interest of all as a One Whole.

This has tempted me to hazard my sentiments on this subject. My particular situation gave me early opportunity of seeing and observing the state of things, which have been long leading to this crisis. I have seen and mark'd, where it was my duty, this nascent crisis at the beginning of this war, and may affirm, have foreseen and foretold the events that now form it.

In the first uncultur'd ages of Europe, when men sought nothing but to possess, and to secure possession, the power of the
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sword was the predominant spirit of the world ; it was that, which formed the Roman empire ; and it was the same, which, in the declension of that empire, divided again the nations into the several governments formed therefrom.

When men afterward, from leisure, began to exercise the powers of their minds in (what is called) learning ; religion, the only learning at that time, led them to a concern for their spiritual interests, and consequently led them under their spiritual guides. The power of *religion* would hence as naturally predominate and rule, and did actually become the ruling spirit of the policy of Europe. It was this spirit, which, for many ages formed, and gave away kingdoms ; this which created the anointed Lords over them, or again excommunicated and execrated these sovereigns ; this that united and allied the various nations, or plung'd them into war and bloodshed ; this, that formed the ballance of the power of the whole, and actuated the second grand scene of Europe's history.

But since the people of Europe have formed their communication with the commerce of Asia ; have been, for some ages past, settling on all sides of the Atlantic Ocean, and in America, and possessing every seat and

channel of commerce, and have planted and raised that to an interest which has taken root;—since they now feel the powers that derive from this, and are extending it to, and combining it with others; the spirit of *commerce* will become that predominant power, which will form the general policy, and rule the powers of Europe: and hence a grand commercial interest, the basis of a great commercial dominion, under the present state and circumstances of the world, will be formed and arise. The rise and forming of this commercial dominion is what precisely constitutes the present crisis.

While each country supposes, that its own government actuates and governs the trade of its respective subjects and dependencies, there is in fact a general kind of *lead in commerce, distinct from any* of the governments of Europe, a general interest that is not concerned in, nor governed by the respective interests of Europe, that flows in its own channel, and is held in motion by the laws of its own nature. Whether this idea may be thought real or visionary, whether we attend to it or not, is of no consequence as to the existence and procession of it. It is not in the power of human wisdom, either to form it, or to oppose it; it is formed, and it will become the basis of a commercial
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dominion. The being able to discern this state of things, at their first birth, is of great use to any nation ; but to be in such circumstances, as to interweave these nascent powers into, and to combine their influence with, the same interests that actuate our own government, must be of the last importance to the glory, and perhaps the being, of such government. In the courses of the procession of mankind, as in the operations of nature, all that we can do is, to mark the nascent state of things, that, when a crisis is forming, we may so connect and combine our operations with it, as to partake of its influence, and to build on its power. It is not men that form great events, but the crisis of events duly possessed and actuated that form great men.

It is not in the possibility of all the power and wisdom of our government, to form this great commercial power ; but it would be the wisdom, and is the duty of those who govern us, to profit of, to possess, and to take the lead of it already formed, and arising fast into dominion. This lead seemed at the beginning of the war, to oscilate between the English and French ; and it was in this war that the dominion also hath been disputed. The lead is now in our hands ; we have such hold of the ballance, that when-

ever this lead becomes the foundation of a dominion, it must be ours.

It is now the duty of those who govern us, to carry forward this state of things, to the weaving this lead into our system, that our kingdom may be no more considered as the mere kingdom of this isle, with many appendages of provinces, colonies, settlements, and other extraneous parts; but as a grand marine dominion, consisting of our possessions in the Atlantic and in America united into a one interest, in a one center where the seat of government is. As the rising of this crisis, above described, forms precisely *the object* on which government should be employed; so the taking leading measures towards the forming all these Atlantic and American possessions into a one dominion, of which Great Britain should be the commercial center, to which it should be the spring of power, is the *precise duty* of government at this crisis.

I suppose nobody can be so ignorant, or imagine me to be so ignorant, as to conceive, that this dominion is actually and in fact, to be established at this moment; or that those circumstances, and that state of things which will in the *natural course* of events arise in future, can be now artificially brought
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on by the force of policy; but lest any such misconception should be received, I must beg that it may be distinctly understood, that notwithstanding it be a fundamental maxim and law in every kingdom and state, that the trade of its respective colonies shall be confined solely to the intercourse and commerce of the mother country;—yet such is the state, and such are the circumstances of these colonies universally, that without an absolute and entire infraction of this principle, they would neither have any trade, nor even subsistence; and the fact is, that this maxim is universally through all the Spanish, Dutch, French, Danish and British colonies broke through. If the colonies may be supposed to be naturally as well as artificially united in the interest, and submitted to the dominion of the mother country, their interest and actions must follow the fate of that mother country; but, that these colonies may be at war, when the mother country might otherwise be at peace, the Spanish war is a proof; that they may be in the full exercise of the commerce of peace when the mother countries are at war, I believe every war is a proof. If therefore, having an interest which requires a trade, directly contrary to the fundamental maxims and laws of the mother country, and if these several interests in the colonies of the different nations

throughout the Atlantic, thus absolutely different from the particular interest of their respective mother countries, must necessarily so combine, as to form a one general commercial interest, different and distinct from the general and European interest of the several powers on which they depend: I do repeat, that there is a general commercial interest of the Atlantic and American settlements, peculiar to these settlements, and distinct from either the particular interests of the respective mother countries, or the general interest of their European policy; that this general interest will, in its natural tendency, lead under the influence of that branch of business, and those merchants who actuate it, which predominates in the general intercourse and operation of its necessities; that this lead will dissolve the effect of all artificial connections which government would create, and form the natural connections under which these interests actually exist,—will supersede all particular laws and customs, and operate by those which the nature and actual circumstances of the several interests require. This lead, I repeat it, is the foundation of a commercial dominion, which, whether we attend to it or not, will be formed; for the interest, that is the basis of it, is already formed: incapable from both internal and external causes, to become

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alliance, and settle the union of their mutual interests, and the eventual partition of the effect of it; but this will prove a matter of more difficulty, than can easily be compassed, and under the disadvantages created thereby, there will be much hazard of the utmost effort of their united forces.

To enable the British nation to profit of these circumstances, either at present, or of the future events, as they shall successively arise in the natural procession of the effects of these circumstances, in its dominions, possessions and commerce abroad, it is necessary, that the administration form itself at home, into such establishments for the direction of these interests and powers, as may lead them in their natural channel, under due connections with the government, to the utmost effect they are capable of producing towards this grand point.

The first spring of this direction, the basis of this government, is the administration at home. If that department of administration, which should have the direction of these matters, be not wisely and firmly bottomed, be not so built, as to be a *practical*—be not so really supported by the powers of government, as to be an *efficient administration*, all measures for the administration of these

these interests, all plans for the government of these powers are vain and self-delusive ; even those measures that would regulate the movements and unite the interests, under a practical and efficient administration, become mischievous meddling impertinencies where that is not, and must either ruin the interests of these powers, or render a breach of duty necessary to avoid that ruin.

That part of government, which should administer this great and important branch of business, ought, in the first place, to be the center of all information and application from all the interests and powers which form it ; and ought, from this center, to be able, fully, uniformly, and efficiently, to distribute its directions and orders. Wherever the wisdom of state shall determine that this center of information shall be fixed ; from whatever department all appointments, orders, and executive administration shall issue, it ought somewhere to be fixed, known, of record, and undivided ; that it may not be partial, it ought to extend to all times, and all cases. All application, all communication, all information should center immediately and solely in this department : this should be the spring of all nominations, instructions, and orders.—It is of little consequence where this power of administration is

is placed, so that the department be such, as has the means of knowledge of its business—is specially appropriated to the attention necessary to it—and officially so formed as to be in a capacity of executing it. Whether this be a Secretary of State, or the Board of Trade and Plantations, is of no consequence; but it ought to be intirely in either the one or the other. Where the power, for the direction is lodged, there ought all the knowledge of the department to center; therefore all officers, civil and military, all servants of the government, and all other bodies or private persons ought to correspond immediately with this department, whether it be the Secretary of State or the Board of Trade. While the military correspond with the Secretary of State, the civil in one part of their office with the Secretary of State, in another with the Board of Trade; while the navy correspond in matters not merely naval with the Admiralty, while the engineers correspond with the Board of Ordnance, officers of the revenue with the several boards of that branch, and have no communication with the department which has, or ought to have, the general direction and administration of this great Atlantic and American, this great commercial interest, who is to collect? who does, or ever did collect, into a one view, all these matters of information
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and knowledge? What department ever had, or could have, such general direction of it, as to discuss, compare, rectify and regulate it to an official real use? In the first place, there never was yet any one department form'd for this purpose; and in the next, if there was, let any one acquainted with business dare to say, how any attempt of such department would operate on the jealousies of the others. Whenever, therefore, it is thought proper, (as most certainly it will, some time or other, tho' perhaps too late) to form such department, it must (if I may so express myself) be sovereign and supreme, as to every thing relating to it; or to speak plainly out, *must be a secretary of state's office in itself*. When such is form'd, although the military, naval, ordnance, and revenue officers, should correspond, in the matters of their respective duties, with the departments of government to which they are more immediately subordinate and responsible, yet, in general matters of information, or points which are matters of government, and the department of this state office, they should be instructed to correspond and communicate with this minister. Suppose that some such minister or office now existed, is it not of consequence that he should be acquainted with the Geography of our new acquisitions? If, therefore,

fore, there have been any actual survey^s made of them, should not such, or copies of such, be sent to this minister, or office? If a due and official information of any particular conduct in our colonies, as to their trade, might lead to proper regulations therein, or might point out the necessity of a revision of the old laws, or the making further provision by new ones, would it not be proper that the custom-house officers settled there should be directed to correspond and communicate with this minister, or office, on these points? Would it interfere with their due subordination, as officers of the revenue, to the commissioners of the customs?—If there were any events arising, or any circumstances existing, that might affect the state of war or peace, wherein the immediate application of military operations were not necessary or proper, should not the military and naval officers be directed to communicate on these matters with this minister, or office? Should not, I say, all these matters of information come officially before this minister, if any such state minister, or office, was established?

As of information and knowledge centering in a one office, so also of power of executing, it should spring from one undivided department. Where the power of nominating and dismissing, together with other powers,

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powers, is separated from the power of directing, the first must be a mere privilege or perquisite of office, useless as to the king's business or the interest of his colonies, and the latter must be inefficient. That office, which neither has the means of information, nor can have leisure to attend to the official knowledge produced thereby, nor will be at the trouble to give any official directions, as to the ordinary course of the administration of the American matters, must certainly be always, as it is, embarrassed with the power of nomination, and fetter'd with the chain of applications, which that power drags after it. On the other hand, what effect will any instructions, orders or directions, have from that board, which has not interest to make or dismiss one of the meanest of its own officers: this, which is at present the only official channel, will be despised; the governors, nay, every the meanest of the officers in the plantations, looking up solely to the *giving power*, will scarce correspond with the *directing*—nay, may perhaps contrive to make their court to the one, by passing by the other. And in any case of improper conduct of these officers, of any neglect of duty, or even of misdemeanour; what can this directing power do, but complain to the minister who nominates, against the officers appointed by him? If there

there be no jealousies, no interfering of interests, no competitions of interfering friends, to divide and oppose these two offices to each other : if the minister is not influenced to continue, upon the same motives upon which he first appointed ; if he does not see these complaints in a light of opposition to his nomination and interest ; some redress may, after a due hearing between the party and the office, be had ;—the authority of the board may be supported, and a sort of remedy applied to the king's service.

These difficulties and interferences are the natural effects of human conduct actuating a divided and indeterminate power ; and every mischief that can arise from thence in the king's service, must be the certain consequence. But happy it is at present for the public in this very important crisis, that although these be the usual effects of such circumstances, yet such is the temper of particulars, such the zeal of all for his Majesty's service, such the union of his servants, that the spirit of service predominates over these natural defects.

It is not only from the natural impracticability of conducting this administration under a divided State of power and direction, that the necessity of forming a some one
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state office, or minister of state, for the executing it arises : but the very nature of the business of this department, makes the officer who is to administer it a state officer, a minister for that department, and who ought to have immediate access to the closet. I must here repeat, that I am no partizan of the secretary of state's office, or for the board of trade: I have ceased to have any connection of business with either, and have not the least degree of communication with the one or the other. Without reference, therefore, to either, but with all deference to both, I aim to point out, that the department of the administration of Trade and plantations, be it lodged where it may, should be a State office, and have a minister of state. That office, or officer, in a commercial nation like this, who has the cognizance and direction (so far as Government can interfere) of the general trade of the kingdom—whose duty it is to be the depository and reporter of the state and condition of it; of every thing which may advance or obstruct it, of the state of manufactures, of the fisheries, of the employment of the poor, of the promoting the labour and riches of the country, by studying and advising every advantage, that can be made of every event which arises in commercial politics; every remedy, which can remove any defect or obstruction;—who is

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officially to prepare every provision or revision necessary in the laws of trade, for the consideration of parliament; and to be the conductor of such thro' the necessary measures—is certainly an officer of state, if the secretary of state, so call'd, is. That office, or officer, who has cognizance and direction of the plantations in every point of government, in every matter judicial or commercial; who is to direct the settlements of colonies, and to superintend those already settled; who is to watch the plantations in all these points, so far as they stand related to the government, laws, courts and trade of the mother country—is certainly an officer of state, if the secretary of state, so called, is. That office, or officer, who is to report to his Majesty in council on all these points; whose official *fiat*, or negative, will be his Majesty's information in council, as to the legislature in the colonies—is certainly an officer of state. That office, or officer, who is to hear and determine on all matters of complaint, and mal-administration, of the crown officers and others, in the plantations; and can examine witnesses on oath—is surely an officer of state. That office, or officer, who is to correspond with all the servants of the crown on these points, and to be the issuer of his Majesty's orders and instructions to his servants, on these many,

great, and important points of state—is certainly his Majesty's secretary, and certainly a secretary of state.

But if it be considered further, who the persons are, that constitute the very great and extensive commission of the board of trade and plantations; namely, all the great officers of state for the time being, with the bishop of London, the secretaries of state for the time being, and those more especially called the commissioners of trade, it will be seen, that it is no longer a doubt or a question, as to its being an office of state: it is actually so; and has, as an office, as a board, immediate access to his Majesty in council, even to the reporting and recommending of officers. This was the plan whereon it was originally founded, at its first institution, by Lord Sommers.

The only question, therefore, is, who shall be the executive officer of this department of state; whether the secretary of state, properly so called; or the first lord, and other commissioners, properly called *the board of trade*; or whether it shall remain divided, as it is, between the several great departments of administration; or whether some more official and practical division of this administration may not be made.

Suppose now, it should be thought proper, that this administration be placed in the secretary of state's office, all the administration of the plantations may be given to the southern department: yet the great object of the general trade of Great Britain must be divided between the southern and the northern, as the matters of consideration happen to lye in the one or in the other department; and how will the southern department act, when any matter of commerce arises in the plantations, that has special connections or interferences with the Dutch, Hamborough, Danish, or Russian trade?

It cannot lie in the board of trade, properly so called, until it be found proper, and a measure of government to erect that board into a secretary of state's office for that department, which, first or last, it most certainly will do. That, therefore, the great business of trade and plantations may not run into confusion, or be at a stand;—that it may be carried to the effect proposed, held forth, and desired by government, and necessary to it; all that can be done at present is, to put the whole executive administration, the nomination, correspondence, issuing of instructions, orders, &c. under the secretary of state, if he has leisure to attend to it, and can undertake it; and to make the
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board of trade a mere committee of reference and report ; instead of reporting to the king in council, to report to the secretary, who shall lay the matters before his Majesty, and receive and issue his orders ;—who shall refer all matters to this committee, for their consideration, and shall conduct through the legislature all measures necessary to be determined thereby. If this be not practicable, there is no other alternative, than to do directly what ought to be done, and what, some time or other, must be done ; the making the officer who conducts this department a minister for that department, with all the powers necessary thereto. For until a practical and efficient administration be formed, whatever the people of this country may think, the people of the colonies, who know their business much better than we do, will never believe government is in earnest about them, or their interest, or even about governing them ; and will, not merely from that reasoning, but from necessity of their circumstances, act accordingly.

Knowing, therefore, that first or last, the nature and state of the king's service must, in spite of every idea to the contrary, bring this measure into execution, I have only cursorily suggested some hints of

the grounds on which it will arise : but removed as I am from every communication with administration in this department, and uninformed, I have not presumed to enter into the discussion of this great point. Wherever it is taken up, it must be by persons who, with the benefit of real, official information, and confidential knowledge of resources, must have superior, and the only lights, in which it ought to be viewed, and determined.

Upon a supposition, therefore, that this matter is settled, as most certainly it will be, some time or other, I will proceed, confining myself solely to the matters of the colonies; to review some points that deserve, and will require, the consideration of government, if it ever means to profit of, and lead the great Atlantic and American interest which it has acquired, and to unite it to its dominion.

Before entering into these matters, I do not think it would be impertinent just to mark the idea of colonies, and their special circumstances, which makes it a measure in commercial governments, to establish, cultivate, and maintain them.

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The view of trade in general, as well as of manufactures in particular, terminates in securing an extensive and permanent vent; or to speak more precisely, (in the same manner as shop-keeping does) in having many and good customers: the wisdom, therefore, of a trading nation, is to gain, and to create, as many as possible. Those whom we gain in foreign trade, we possess under restrictions and difficulties, and may lose in the rivalry of commerce: those that a trading nation can create within itself, it deals with under its own regulations, and makes its own, and cannot lose. In the establishing colonies, a nation creates people whose labour, being applied to new objects of produce and manufacture, open new channels of commerce, by which they not only live in ease and affluence within themselves, but, while they are labouring under and for the mother country, (for there all their external profits center) become an increasing nation, of appropriated and good customers to the mother country. These not only increase our manufactures, encrease our exports, but extend our commerce; and if duly administered, extend the nation, its powers, and its dominions, to wherever these people extend their settlements. This is, therefore, an interest which is, and ought to be dear to the mother country:

country: this is an object that deserves the best care and attention of government: and the people, who through various hardships, disasters, and disappointments; through various difficulties and almost ruinous expences, have wrought up this interest to such an important object, merit every protection, grace, encouragement, and privilege, that are in the power of the mother country to grant.

It becomes the duty of the mother country to nourish and cultivate, to protect and govern the colonies—which nurture and government should precisely direct its care and influence to two essential points. 1st, That all the profits of the produce and manufactures of these colonies center in the mother country: and 2dly, That the colonies continue to be the sole and special proper customers of the mother country. It is on this *valuable consideration*, (as Mr. Dummer, in his prudent and spirited defence of the colonies says) they have a right to the grants, charters, privileges and protection which they receive; and also on the other hand, it is from these grants, charters, privileges and protection given to them, that the mother country has an exclusive right to the external profits of their labour, and to their custom. To these two points, col-
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lateral with the interests, rights and welfare of the colonies, every measure of administration, every law of trade should tend: I say collateral, because, rightly understood, these two points are mutually coeval and coincident with the interests, rights and welfare of the colonies.

It has been often suggested, that care should be taken in the administration of the plantations; lest, in some future time, these colonies should become independent of the mother country. But perhaps it may be proper on this occasion, to say, it is justice to say it, that if, by becoming independent is meant a revolt, nothing is further from their nature, their interest, their thoughts. If a defection from the alliance of the mother country be suggested, it ought to be, and can be truly said, that their spirit abhors the sense of such; their attachment to the protestant succession in the house of Hanover will ever stand unshaken; and nothing can eradicate from their hearts their natural, almost mechanical, affection to Great Britain, which they conceive under no other sense, nor call by any other name, than that of *home*. Besides, the merchants are, and must ever be, in great measure allied with those of Great Britain: their very support

support consists in this alliance. The liberty and religion of the British colonies are incompatible with either French or Spanish government; and they know full well, that they could hope for neither liberty nor protection under a Dutch one; no circumstances of trade could tempt them thus to certain ruin. Any such suggestion, therefore, is a false and unjust aspersions on their principles and affections; and can arise from nothing but an intire ignorance of their circumstances. Yet again, on the other hand, while they remain under the support and protection of the government of the mother country; while they profit of the beneficial part of its trade; while their attachment to the present royal family stands firm, and their alliance with the mother country is inviolate, it may be worth while to inquire, whether they may not become and act independent of the *government and laws* of the mother country:—and if any such symptoms should be found, either in their government, courts, or trade, perhaps it may be thought high time, even now, to inquire how far these colonies are or are not arrived, at this time, at an independency of the government of the mother country:—and if any measure of such independency, formed upon precedents unknown to the
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government of the mother country at the time they were form'd, should be insisted on, when the government of the mother country was found to be so weak or distracted at home, or so deeply engaged abroad in Europe, as not to be able to attend to, and assert its right in America, with its own people:—perhaps it may be thought, that no time should be lost to remedy or redress these deviations—if any such be found; or to remove all jealousies arising from the idea of them, if none such really exist.

If the colonies are to be possessed, as of right, and governed by the crown, as domains of the crown, by such charters, commissions, instructions, &c. as the crown shall, from time to time, grant or issue; then a revision of these charters, commissions, instructions, so as to establish the rights of the crown, and the privileges of the people, as thereby created, is all that is necessary. But while the crown may, perhaps justly and of right, *in theory*, consider these lands, and the plantations thereon, as its domains, and as of special right properly belonging to it; not incorporated and of common right with the dominions and realm of Great Britain: in consequence of which theory, special rights of the crown are there established;

ed ; and from which theory, the special modification under which the people possess their privileges is derived.—While this is the idea on one hand, the people on the other say, that they could not forfeit, nor lose the common rights and privileges of Englishmen, by adventuring under various disasters and difficulties ; under heavy expences, and every hazard, to settle these vast countries, to engage in untried channels of labour, thereby increasing the nation's commerce, and extending its dominions ; but that they must carry with them, wherever they go, the right of being governed only by the laws of the realm ; only by laws made with their own consent :—that they must ever retain with them the right of not being taxed without their own consent, or that of their representatives ; and therefore, as it were by nature divided off from the share of the general representation of the nation, they do not hold, by tenor of charter or temporary grant, in a commission, but by an inherent, essential right, the right of representation and legislature, with all its powers and privileges, as possessed in England. It is, therefore, that the people do, and ever will, until this matter be settled, exercise these rights and privileges after the precedents formed here in England, and perhaps carried, in the application,

plication, even further, than they ever were in England; and not under the restriction of commissions and instructions: and it is therefore also, in matters where laws, made since their establishment, do not extend to them by special proviso, that they claim the right of directing themselves by their own laws. While these totally different ideas of the principles, whereon the government and the people found their claims and rights, remain unsettled and undetermined, there can be nothing but discordant jarring, and perpetual obstruction in the exercise of them;—there can be no government, properly so called, but merely the predominancy of one faction or the other, acting under the mask of the forms of government. This is the short and precise abstract of the long and perplexed history of the governments and administrations of the colonies, under the various shapes with which their quarrels have vexed themselves, and teized government at home.

If this idea of the crown's right to govern these as domains be just, and be as right in fact, as it is supposed to be in theory, let it be settled and fixed by some due and sufficient authority, what it is, and how far it extends. But this is not all; let it be so established, that where it ought, it may actually

actually, and in practice, be carried into execution also. If this right be doubted ; or if, being allowed, it finds itself in such circumstances as not to be able to carry its powers into execution, it will then become an object of government, to see that these colonies be governed, and their affairs administered some other way. There is no doubt in the theory of our constitution of the king's right, in time of war and array, to exercise martial law : and yet in practice it has been found right, (and would not otherwise be permitted) that this martial law should be confirmed by parliament.

If, therefore, the several points wherein the crown, or its governors acting under its instructions, differ with the people be considered, and it be once determined what, in order to maintain the subordination of the government of the colonies to the government of Great Britain, is necessary to be done,—the mode of doing that will be easily settled. If it be a point determined, that it lies wholly with the crown to fix and actuate this order of government—the crown will duly avail itself of that power, with which it is entrusted, to enforce its administration. But if it be found that, however this may lie with the crown as of right, yet the crown is not in power to establish this right,
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—it will of course call in aid the power of the legislature, to confirm and establish it. But if, finally, it should appear, that these colonies, as corporations within the dominions of Great Britain, are included within the imperium of the realm of the same,—it will then of right become the duty of legislature to interpose in the case; to regulate and define their rights and privileges; to establish and order their administration; and to direct the channels of their commerce. Tho' the first of these measures should be, in strict justice, the crown's right—yet the second is the only next practicable one: and altho' the second, as such, may most likely be adopted—yet the third is the only wise and sure measure. In the second case, the crown, having formed its several general instructions for the several governments, according to their various charters, grants, and proprietaries, will order the same, in those points which it cannot influence and determine by the effect of its own negative, to be laid before parliament, to be considered and confirmed by the legislature, in the same manner as are the rules for governing the army. In the third case, the crown will order its ministry to lay before parliament, the rights and powers of the crown; the rights, privileges and claims of the people; with a general state of the colonies, their
interest

interest and operations, as related to the crown, as related to the mother country, as related to foreign powers and interests, and to the colonies of foreign powers, as related to the laws and government of the mother country;—perhaps pointing out some general plan of government, judicatory, revenue and commerce, as may become, what I hinted at in the beginning of this paper—a leading measure to the forming Great Britain, with all its Atlantic and American possessions, into one great commercial dominion. In the one case, the instructions of the crown, either some general form of such, or the special ones given to each governor, on each fresh nomination, will be confirm'd by parliament, as the rules and orders for governing the army are. In the other, a general bill of rights, and establishment of government and commerce on a great plan of union, will be settled and enacted: the governments of the several colonies, on the continent and in the islands, will be considered as so many corporations, holding their lands in common soccage, according to the manor of East Greenwich, united to the realm; so that, for every power, which they exercise or possess, they will depend on the government of Great Britain; so that, in every movement, they may be held, each within its proper sphere, and be drawn and connected

connected to this center: and as forming a one system, they will be so connected in their various orbs and subordination of orders, as to be capable of receiving and communicating, from the first mover (the government of Great Britain) any political motion, in the direction in which it is given. Great Britain, as the center of this system, must be the center of attraction, to which these colonies, in the administration of every power of their government, in the exercise of their judicial powers, and the execution of their laws, and in every operation of their trade, must tend. They will be so framed, in their natural and political interests; in the rights, privileges, and protection they enjoy; in the powers of trade, which they actuate, under the predominating general commerce of the nation, that they will remain under the constant influence of the attraction of this center; and cannot move, but that every direction of such movement will converge to the same. At the same time that they all conspire in this one center, they must be guarded against having, or forming, any principle of coherence with each other above that, whereby they cohere in this center; having no other principle of intercommunication between each other, than that by which they are in joint communion with

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Great Britain as the common center of all. At the same time that they are, each in their respective parts and subordinations, so framed, as to be actuated by this first mover,—they should always remain incapable of any coherence, or of so conspiring amongst themselves, as to create any other equal force, which might recoil back on this first mover: nor is it more necessary to preserve the several governments subordinate within their respective orbs, than it is essential to the preservation of the empire to keep them disconnected and independent of each other: they certainly are so at present; the different manner in which they are settled, the different modes under which they live, the different forms of charters, grants and frame of government they possess, the various principles of repulsion,—that these create the different interests which they actuate, the religious interests by which they are actuated, the rivalry and jealousies which arise from hence, and the impracticability, if not the impossibility of reconciling and accommodating these incompatible ideas and claims, will keep them for ever so. And nothing but a tampering activity of wrongheaded inexperience misled to be meddling, can ever do any mischief here. The provinces and colonies are under the best form as to this point, which they can be. They are under
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the best frame and disposition for the government of the mother country (duly applied) to take place. And as there cannot be a more just, so there cannot be a wiser measure than to leave them all in the free and full possession of their several rights and privileges, as by grant, charter, or commission given, and in the full exercise thereof, so far, and no further, than as derived therefrom. If, upon a revision, there be found any, and perhaps some one such at least, may be found, who have grossly and intentionally transgressed these bounds, such should be an exception to this rule, and be made an example also to others.

Under the guidance therefore of these principles—that the final external profits of the labour and produce of colonies should center in the mother country,—that the colonists are the appropriated special customers of the mother country,—that the colonies, in their government and trade, should be all united in communion with, and subordination to the government of the mother country, but ever disconnected and independent of each other by any other communion than what centers here:—Under the guidance of these principles, with a temper and spirit which remember that these are our own people, our brethren, faithful, good

and beneficial subjects, and free-born Englishmen, or by adoption, possessing all the right of freedom :—Under the guidance of these principles, and with this temper and spirit of government,—let a revision be made of the general and several governments of the colonies, of their laws and courts of justice, of their trade, and the general British laws of trade, in their several relations in which they stand to the mother country, to the government of the mother country, to foreign countries, and the colonies of foreign countries, to one another, and then let those measures be taken, which, upon such a review, shall appear necessary; and all which government can do, or ought to do at present, will be done.

Upon such review it will appear, under this first general head, in various instances, that the two great points which the colonists labour to establish, is the exercise of their several rights and privileges, as founded in the rights of an Englishman; and secondly, as what they suppose to be a necessary measure in a subordinate government, the keeping in their own hands the command of the revenue, and the pay of the officers of government, as a security for their conduct towards them.

Under the first head come all the disputes about the King's instructions, and the governor's power.

The King's commission to his governor, which grants the power of government, and directs the calling of a legislature, and the establishing courts, at the same time that it fixes the governor's power, according to the several powers and directions granted and appointed by the commission and instructions, adds, "and by such *further powers, instructions,* " and authorities, as shall, at any time here- " after be granted or appointed you, under " our signet or sign manual, or by our order " in our privy council." It should here seem, that the same power which framed the commission, with this clause in it, could also issue its *future orders and instructions* in consequence thereof: but the people of the colonies say, that the inhabitants of the colonies are entitled to all the privileges of Englishmen; that they have a right to participate in the legislative power; and that no commands of the crown, by orders in council, instructions, or letters from Secretaries of State, are binding upon them, further than they please to acquiesce under such, and conform *their own actions* thereto; that they hold this right of legislature, not derived from the grace and will of the crown,

and depending on the commission which continues at the will of the crown; that this right is inherent and essential to the community, as a community of Englishmen: and that therefore they must have all the rights, privileges, and full and free exercise of their own will and liberty in making laws, which are necessary thereto,—uncontrouled by any power of the crown, or of the governor, as derived therefrom; and, that the clause in the commission, directing the governor to call together a legislature by his writs, is declarative and not creative; and therefore he is directed to act conformably to a right actually already existing in the people, &c.

Just, as this reasoning may be, and right, as it may be, that the assembly, in its legislative capacity, as one branch, should be independent of the governor as another branch in the legislature,—yet sure, so long as these governments are subordinate to the government of the mother country, even the legislature cannot act independent of it, nor of that part of it which the constitution has determined is to govern these colonies. I do not here enter into the discussion of this point; I only endeavour fairly to state it, as I think, it is a matter which ought to be settled some way or other, and ought no longer

longer to remain in contention, that the several matters which stand in instruction, and in dispute in consequence of it, may be finally placed upon their right grounds; in the doing of which it must come under consideration, how far the crown has or has not a right to direct or restrict the legislature of the colonies,—or if the crown has not this power, what department of government has, and how it ought to be exercised;—or whether in fact or deed, the people of the colonies, having every right to the full powers of government, and *to a whole legislative power*, are under this claim entitled in the powers of legislature and the administration of government, to use and exercise in conformity to the laws of Great Britain, the same, full, free, independent, unrestrained power and legislative will in their several corporations, and under the King's commission and their respective charters, as the government and legislature of Great Britain holds by its constitution, and under the great charter.

Every subject, born within the realm, under the freedom of the Government of Great Britain, or by adoption admitted to the same, has an essential indefeasible right to be governed, under such a mode of government as has the unrestrained exercise of all those

powers which form the freedom and rights of the constitution; and therefore, " the " crown cannot establish any colony upon— " or contract it within a *narrower scale* than " the subject is entitled to, by the great " charter of England." The government of each colony must have the same powers, and the same extent of powers that the government of Great Britain has,—and must have, while it does not act contrary to the laws of Great Britain, the same freedom and independence of legislature, as the parliament of Great Britain has. This Right (say they) is intended, not only in the general principles of the rights of a British subject, but is actually declared, confirmed, or granted to them in the commissions and charters which gave the particular frame of their respective constitutions. If therefore, in the first original establishment, like the original contract, they could not be established upon any scale short of the full and complete scale of the powers of the British government,—nor the legislature be established on any thing less than the whole legislative power; much less can this power of government and legislature, thus established, be governed, directed, restrained or restricted, by any posterior instructions or commands by the letters of Secretaries of State. But upon the supposition, that a kind of general

ral indetermined power in the crown, to superadd instructions to the commissions and charter be admitted, where the colonists do not make a question of the case wherein it is exerted, yet there are particular cases wherein both directive and restrictive instructions are given, and avowedly not admitted by the colonists. It is a standing instruction, as a security of the dependance of the government of the colonies, on the mother country, that no acts wherein the Kings Rights, or the rights of the mother country can be affected, shall be enacted into a law without a clause suspending the effect thereof, till his Majesty's pleasure shall be known. This suspending clause is universally rejected on the principles above, because such suspension disfranchises the inherent full power of legislature, which they claim by their rights to the British liberties, and by the special declarations of such in their charters. It does not remove this difficulty by saying, that the crown has already in its hands the power of fixing this point, by the effect of its negative given to its governor. It is said, that if the crown should withdraw that instruction, which allows certain bills to be passed into laws with a suspending clause, which instruction is not meant as a restriction upon, but an indulgence to the legislatures; that if the crown should

should withdraw this instruction, and peremptorily restrain its governor from enacting laws, under such circumstances as the wisdom of government cannot admit of, that then these points are actually fixed by the true constitutional power; but wherever it is so said, I must repeat my idea, that this does not remove the difficulty. For waving the doubt which the colonists might raise, especially in the charter colonies, how far the governor ought, or ought not, to be restricted from giving his assent in cases contrary only to instructions, and not to the laws of Great Britain; waving this point, let administration consider the effects of this measure. In cases where the bills, offered by the two branches, are for providing laws, absolutely necessary to the continuance, support, and exercise of government, and where yet the orders of the crown, and the sense of the people, are so widely different as to the mode, that no agreement can ever be come to in these points.—Is the government and administration of the government of the colonies to be suspended? The interest, perhaps the being of the plantations, to be hazarded by this obstinate variance, and can the exercise of the Crown's negative, in such emergencies, and with such effect, ever be taken up as a measure of administration?

And

And when every thing is thrown into confusion, and abandoned even to ruin by such measure, will administration justify itself by saying, that it is the fault of the colonists? On the contrary, this very state of the case shows the necessity of some other remedy.

The settling and determining this point is of the most essential import to the liberties on one hand, and the subordination on the other, of the government of the colonies to the government of the mother country.—In the examination of this point, it will come under consideration, first, Whether the full and whole of legislature can be any way, in any special case, suspended; and next, whether the crown, by its instructions, can suspend the effect of this legislature, which by its commission or charters it has given or declared; if not, the crown, whether the parliament of Great Britain can do it, and how; whether it should be by act of Parliament, or whether by addressing the crown upon a declarative vote, that it would be pleased to provide, by its instructions, for the carrying the effect of such vote into execution, as was done in the case of the paper-money currency.

In the course of examining these matters, will arise to consideration the following very material

material point. As a principal tie of the subordination of the legislatures of the colonies on the government of the mother country, they are bound by their constitutions and charters, to send all *their acts* of legislature to England, to be confirmed or abrogated by the crown; but if any of the legislatures should be found to do almost every act of legislature, by votes or orders, even to the repealing the effects of acts, suspending establishments of pay, paying services, doing chancery, and other judicatory business: if matters of this sort, done by these votes and orders, never reduced into the form of an act, have their effect without ever being sent home as acts of legislature, or submitted to the allowance or disallowance of the crown: if it should be found that many, or any of the legislatures of the colonies carry the powers of legislature into execution, independent of the crown by this device,—it will be a point to be determined how far, in such cases, the subordination of the legislatures of the colonies to the government of the mother country is maintained or suspended;—or if, from emergencies arising in these governments, this device is to be admitted, the point, how far such is to be admitted, ought to be determined; and the validity of these votes and orders, these *Senatus Consulta* so far declared. For a point of such great import-

importance in the subordination of the colony legislatures, and of so questionable a cast in the valid exercise of this legislative power, ought no longer to remain in question.

The next general point yet undetermined, the determination of which very essentially imports the subordination and dependance of the colony governments on the government of the mother country, is, the manner of providing for the support of government, and all the executive officers of the crown. The freedom and right efficiency of the constitution require, that the executive and judicial officers of government should be independent of the legislative, and more especially in popular governments, where the legislature itself is so much influenced by the humours and passions of the people; for if they be not, there will be neither justice nor equity in any of the courts of law, nor any efficient execution of the laws and orders of government in the magistracy; according therefore, to the constitution of Great Britain, the crown has the appointment and payment of the several executive and judicial officers, and the legislature settle a permanent and fixed appointment for the support of government and civil list in general : This therefore the crown has,

has, *à fortiori*, a right to require of the colonies, to whom, by its commission or charter it gives the power of government, (and does, by its instructions to its governors, direct them to require of the legislature) such permanent support, appropriated to the offices, not the officers of government, that they may not depend upon the temporary and arbitrary will of the legislature.

This order of the crown is generally, if not universally rejected, by the legislatures of the colonies. The assemblies who quote the precedents of the British constitution, in all the rights and privileges which they claim on the principles thereof, allow the truth and fitness of this principle in the British constitution, where the executive power of the crown is immediately administered by the King's Majesty; yet say, under the circumstances in which they find themselves, that there is no other measure left to them to prevent the misapplications of public money, than by an annual revenue issuing from monies lodged in the hands of a provincial treasurer appointed by the assemblies. For in these subordinate governments, remote from his Majesty's immediate influence, administered oftentimes by necessitous and rapacious governors who have no natural, altho' they have a political connection with the country,

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experience has shewn that they have misapplied the monies raised for the support of government, so that the civil officers have been left unpaid, even after having been provided for by the assembly. The point then of this very important question comes to this issue, whether the inconveniencies arising, and experienced by some instances of misapplications of appropriations (for which however there are in the King's courts of law, due and sufficient remedies against the offender) are a sufficient reason and ground for establishing a measure so directly contrary to the British constitution: and whether the inconveniencies to be traced in the history of the colonies, through the votes and journals of their legislatures, in which the support of governors, judges, and officers of the crown will be found to have been withheld or reduced on occasions, where the assemblies have supposed that they have had reason to disapprove the nomination,—or the person, or his conduct;—whether, I say, these inconveniencies have not been more detrimental and injurious to government; and whether, instead of these colonies being dependent on, and governed under, the officers of the crown, the scepter is not reversed, and the officers of the crown dependent on and governed by the assemblies, as the colonists themselves allow,

that

that this measure * “ renders the governor, “ and all the other servants of the crown, “ dependent on the assembly.” This is mere matter of experience; and the fact, when duly enquired into, must speak for itself:—but the operation of this measure does not end here; it extends to the assuming by the assemblies the actual executive part of government in the case of the revenue, than which nothing is more clearly and unquestionably settled in the crown; the treasurer is solely and entirely a servant of the assembly; and although the monies granted and appropriated be, or ought to be, granted to the crown on such appropriations, the treasurer is neither named by the crown, nor its governor, nor gives security to the crown or to the Lord High Treasurer, (which seems the most proper) nor in many the colonies, is to obey the governor’s warrant in the issue, nor accounts in the auditor’s office, nor in any one colony is it admitted, that he is liable to such account. In consequence of this supposed necessity, for the assembly’s taking upon them the administration of the treasury and revenue, the governor and servants of the crown, in the ordinary revenue of government, are not only held dependent on the assembly, but

* Smith’s History of New York, p. 118.

all services, where special appropriations are made for the extraordinaries which such services require, are actually executed and done by commissioners appointed by the assembly, to whose disposition such appropriations are made liable. It would be perhaps invidious, and might tend to prejudging on points which ought very seriously and dispassionately to be examined, if I were here to point out in the several instances of the actual execution of this assumed power, how almost every executive power of the crown lodged in its governor, is, where money is necessary, thus exercised by the assembly and its commissioners. I beg leave here to repeat, that I do not enter into the discussion of these points; my only aim is, fairly to state them, giving the strongest and clearest explanations I am capable of to both sides, that the discussion may be brought to some determinate issue;—and from that state of them to suggest, the absolute necessity there is of their being determined by that part of government, which shall be found to have the right and power to determine them; and to be so determined, that while the rights, liberties, and even privileges of the colonies are preserved, the colonies may be retained in that true and constitutional dependence to the mother country, and to the

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government of the mother country, which may unite them to it as parts of one whole.

But in nothing is a review and settlement of doubted points more necessary, than in the maxims and rules of their law, and the state of their courts. It is a rule universally adopted through all the colonies, that they carried with them to America the common law of England, with the power of such part of the statutes (those concerning ecclesiastical jurisdiction excepted) as were in force at the time of their establishment; but, as there is no fundamental rule whereby to say, what statutes are admissible, and what not, if they admit all, they admit the full establishment of the ecclesiastical jurisdiction, from which they fled to this wilderness for refuge;—if they once make a distinction of admitting some, and rejecting others, who shall draw the line, and where shall it pass? Besides, as the common law itself is nothing but the practice and determination of courts on points of law, drawn into precedents; where the circumstances of a country and people, and their relation to the statutes and common law differ so greatly, the common law of these countries must, in its natural course, become different, and sometime even contrary, or at least incompatible, with the common law of England,

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land, so as that, in some cases, the determinations arising both from the statute and common law *must be rejected*. This renders the judicatories of these countries vague and precarious, dangerous, if not arbitrary: This leads necessarily (let what care will be taken, in forming and enacting their provincial laws) this leads to the rendering the common law of the country different, incompatible with, if not contrary to, and independent of, the law of the mother country, than which nothing can be more disadvantageous to the subject, and nothing more derogatory from the power of the government of the mother country, and from that fundamental maxim, that the colonists shall have no laws contrary to those of the mother country.

I cannot avoid quoting here at length, a very precise and just observation of the author of the History of New York. "The state of our laws opens a door to much controversy. The uncertainty with respect to them, renders property precarious, and greatly exposes us to the arbitrary decision of bad judges. The common law of England is generally received, together with such statutes as were enacted before we had a legislature of our own; but our courts exercise a sovereign authority

" rity in determining, *what parts of the com-*
 " *mon and statute law* ought to be extended;
 " for it must be admitted, that the differ-
 " ence of circumstances necessarily requires
 " us, in some cases, to *reject* the determina-
 " tion of both. In many instances, they
 " have also extended even acts of parliament,
 " passed since we have had a distinct legisla-
 " tion, which is greatly adding to our con-
 " fusion. The practice of our courts is
 " not less uncertain than the law. Some of
 " the English rules are adopted, others rejec-
 " ted. Two things therefore seem to be ab-
 " solutely necessary for the public security.

" First, *The passing an act for settling the*
 " *extent of the English laws.*

" *Secondly,* That the courts ordain a ge-
 " neral set of rules for the regulation of the
 " practice."

From this representation of things, by an
 eminent practitioner in those courts, it must
 be seen that something is wanting, to fix
 determinately the judicial powers.—But
 from a further review made by government
 here, it will be found that much more is
 wanting.—First, to determine (I do not at
 all take into consideration which way it be
 determined, only) I say, to determine some
 points on this head, which are, and will
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otherwise, remain in dispute; but which ought by no means to be suffered one moment to remain in dispute.

The crown directs its governor to erect courts, and appoint the judges thereto.—The actual appointment of the judges is no where *directly* disputed.—But the power of erecting courts, according to this instruction, is, I believe, universally disputed; it being a maxim universally maintained by the colonists, that no court can be erected but by act of legislature.—Those who reason on the side of the crown,—say,—that the crown does not, by erecting courts in the colonies, claim any right of enacting the jurisdiction of those courts, or the laws whereby they are to act.—The crown names the judge, establishes the court, but the jurisdiction is settled by the laws of the realm;—and “ * customs, precedents, and common judicial proceedings of a court are a law to the court, and the determination of courts make points to be law. —” The reasoning of the colonists would certainly hold good against the erection of any new jurisdiction, established on powers not known to the laws of the realm; but how it can be applied to the opposing the establishment of courts, the laws of whose practice, jurisdiction and powers are already settled by

* Rep. 16. 4. Rep. 53. fol. 298.

the laws of the realm, *is the point in issue, and to be determined.* It will then be fixed, beyond dispute, whether the crown can, in its colonies, erect, without the concurrence of the legislature, courts of Chancery, Exchequer, King's Bench, Common Pleas, Admiralty, and Probate or Ecclesiastical courts.—If it should be determined in favour of the reasoning, and the claims of the colonists,—I should apprehend that the consideration of the points under this head, would become an object of government here, even in its legislative capacity.—In which view it may be of consequence to consider, how far, and on what grounds, the rights of the crown are to be maintained by courts of King's Bench, &c. and how far the revenues by courts of Exchequer, and how far the crown and subject may have relief by courts of equity.—If in this view we consider the defects which must be found in Provincial courts, those point out the necessity of the establishment of a remedial general court of Appeal; but if we view the only mode of appeal, which at present exists, we shall see how inapplicable, how inadequate that court is. I cannot, in one view, better describe the defects of the provincial courts in these infant governments, than by that very description which my Lord Chief Justice Hales gives of our county courts, in the infancy of our own government, where—
he mentions,

“ *First,*

First, The ignorance of the judges, who were the freeholders of the county.

Secondly, That these various courts bred variety of law, especially in the several counties, for the decisions or judgments being made by divers courts, and several independent judges and judicatories, who had no common interest amongst them in their several judicatories, thereby in process of time, every several county would have several laws, customs, rules, and forms of proceedings.—

Thirdly, That all the business of any moment was carried by parties and factions, and that those of great power and interest in the county did easily overbear others in their own causes, or in such wherein they were interested, either by relation of kindred, tenure, service, dependence, or application.”

Upon the first article of this parallel, it will be no dishonour to many gentlemen sitting on the benches of the courts of law in the colonies, to say, they are not, and cannot be expected to be lawyers, or learned in the law. And on the second article it is certain, that although it be a fundamental maxim of colony administration, that the

colonies shall have no laws contrary to the laws of Great Britain, yet, from the fluctuation of resolutions, and confusion in the construction and practice of the law in the divers and several colonies, it is certain, that the practice of their courts, and their common law, must be not only different from each other, but in the consequence different also from that of Great Britain. In all the colonies the common law is received as the foundation and main body of their law ; but each colony being vested with a legislative power, the common law is thereby continually altered ; so that (as a great lawyer of the colonies has said) “ by reason of the
 “ diversity of the resolutions, in their re-
 “ spective superior courts, and of the seve-
 “ ral new acts or laws made in them seve-
 “ rally ; the several systems of the laws of
 “ those colonies grow more and more va-
 “ riant, not only from one another, but also
 “ from the laws of England.”

Under the third article, I fear experience can well say, how powerfully, even in courts, the influence of the leaders of party have been felt in matters between individuals. But in these popular governments, and where every executive officer is under a dependence for a temporary, wretched, and I had almost said, arbitrary support to the deputies of the people,

people,—it will be no injustice to the frame of human nature, either in the person of the judges, of the juries, or even the popular lawyer to suggest, how little the crown, or the rights of government, when opposed to the spirit of democracy, or even to the passions of the populace, has to expect of that support, maintenance, and guardianship, which the courts are even by the constitution supposed to hold for the crown.—Nor would it be any injustice to any of the colonies, just to remark in this place, how difficult, if ever practicable it is in any of their courts of common law to convict any person of a violation of the laws of trade, or in any matter of crown revenue. But the defect in most, and actual deficiency in many of the colonies, of a court of equity, does still more forcibly lead to the necessity of the measure of some remedial court of appeal and equity. — In all the King's governments so called,—the governor, or governor and council are the chancellor, or judges of the court of chancery. — But so long as I understand that the governor is, by his general instruction, upon sound principles of policy and justice, restrained from exercising the office of judge or justice in his own person, I own I always considered the governor, taking up the office of chancellor, as a case labouring with inexplicable difficulties.

But

But how unfit are governors in general for this high office of law ; and how improper is it that governors should be judges, where perhaps the consequence of the judgment may involve government, and the administration thereof, in the contentions of parties. But the fact is, that the general diffidence of the wisdom of this court thus constituted, the apprehension that reasons of government may mix in with the grounds of the judgment, has had an effect that the coming to this court is avoided as much as possible, so that it is almost in disuse, even where the establishment of it is allowed. But in the charter governments they have no chancery at all. I must again quote the opinion of a great lawyer in the colonies,—“ there is no court of chancery “ in the charter governments of New Eng- “ land [and I believe I may add also in Pen- sylvania] “ nor any court vested with power “ to determine causes in equity, save only “ that the justices of the inferior court, and “ the justices of the superior court respec- “ tively, have power to give relief on mort- “ gages, bonds, and other penalties con- “ tained in deeds, in all other chancery and “ equitable matters, both the crown and “ the subject are without redress. This in- “ troduced a practice of petitioning the le- “ gislative courts for relief, and prompted “ those

" those courts to interpose their authority.
 " These petitions becoming numerous, in
 " order to give the greater dispatch to such
 " business, the legislative courts transacted
 " such business by orders or resolves, without
 " the solemnity of passing acts for such
 " purposes; and have further extended this
 " power by resolves and orders, beyond
 " what a court of chancery ever attempted
 " to decree, even to the suspending of public
 " laws, which orders or resolves are
 " not sent home for the royal assent. The
 " tendency of these measures is too obvious
 " to need any observations thereon."

Nor do I see how this measure of proceeding
 can be ventured upon in the colonies, or
 suffered to continue by the government here,
 if it be supposed that by 1 Hen. 4. 14. " it
 " is accorded, and assented, that no appeal
 " be from henceforth made, or in any wise
 " pursued in parliament in time to come."

The general apprehension of these defects
 occasioned, that at the first planting of the
 colonies, the King in council here in England
 was established as a court of appeals from
 the provincial judicatories. — At the time
 of settling these colonies, there was no precedent
 of a judicatory besides those within the realm,
 except in the cases of Guernsey and Jersey,
 the remnants of the dutchy of Normandy,
 and not united within the

the realm : according to the custom of Normandy, appeals lay to the Duke in council ; and upon this ground, appeals lay from the judicatories of these islands to the King here, as Duke in council ; and upon this general precedent (without perhaps attending to the peculiar case of the appeal, lying to the Duke of Normandy and not to the King) was an appeal from the judicatories of the colonies to the King in council settled.—But, besides the inapplicableness of such appeal to the modes of the English law ; besides, that this appeal does not actually take place in general, and is in some of the charter colonies actually excluded, except in personal actions, wherein the matter in difference exceeds 300 *l.* sterling ;—besides the difficulty of this appeal, and inefficiency of this redress,—the King in council never being, by the constitution, in any other case, between subject and subject, formed as such a court of appeal, it scarce ever, in the temporary and occasional sittings, looks like such a court ; but is rather accidentally or particularly, than officially attended.

These general apprehensions and reasonings, upon experience, have led many very knowing and dispassionate men in the colonies, into a conviction of the necessity of some established and constitutional court of appeal

appeal and redress: and the following measure has not only been suggested, but even taken up as matter of consideration by some of the ablest lawyers in that country;—namely, the establishment of a supreme court of appeal and equity, not confined to any one government, but circulating through a certain district of governments; perhaps as follows; one to Nova Scotia and New England; one to New York, New Jerseys, Pennsylvania, and Maryland—one to Virginia, the Carolinas, and Georgia. It has been imagined, that this court should be established by a commission issued to two or more persons, learned in the law, not only of the mother country, but of the several governments in its said district: that this commission should give full powers of a court of chancery, with power also of judging on matters of law, to be brought before this court, by writ of error, from the several superior courts of the district, which this extended to. Such court would become an established court of appeals and redress, would regulate all the courts of law, so that they could not exceed their jurisdiction; would have a general superintendency over all inferior courts; would tend to establish some regularity, and introduce a conformity, not only amongst the courts themselves, of the different colonies, but a conformity also to the courts of the

the mother country, in the construction and dispensation of law : such court would, more than any other measure, not only tend to preserve the laws, and practice of law in the colonies, under a constitutional conformity to the laws of the mother country ; but would also maintain that dependency therein, which is of the essence of colony administration.

There are gentlemen on this side the water, who seeing the defects of this measure as to a court of appeals, and not seeing the necessity of a court of chancery at all, as there is nothing contrary to the fundamentals of law, that these law-courts already established should equitize ; (if I may so express myself)—Think, that instead of establishing any new courts of chancery,—it would be very proper to abolish even those already established, extending the power which the law-courts already take in chancery bonds, &c.—by empowering them to equitize : and after that to take such measures as may best establish a fixt and constitutional court of appeals here in England.

Sensible of the danger of innovations, and abhorrent from tampering in experiments of politics, I mention the following rather as matter of speculation, than to recommend the

the trial: yet I cannot but observe, that while the constitutions of the governments of the colonies take so exactly the model of the British constitution, it always struck me as a strange deviation in this one particular, that the governor's council of state, although a distinct, and I had almost said, an incompatible board,—with the council, one branch of the legislature, is yet always constituted of the same persons, in general nominated and liable to be suspended by the governor.—

One may see many advantages, besides the general conformity to the government of the mother country, in having these boards distinct in their persons, as well as their office. If the council of state remaining under the same constitution as at present, was composed of men of the best experience, fortune, and interest in the colony, taken in common from the legislative council, the house of representatives, or the courts, while the members of the legislative council, independent of the governor for their existence, had all and only those powers which are necessary to a branch of the legislature, much weight would be added to administration in the confidence and extent of interest that it would thereby obtain; and to the legislature a more true and political distribution of power, which, instead of the false and artificial lead, now held up by expedients, would throw

throw the real and constitutional ballance of power into the hands of government.

I did, in this place, intend to have considered the nature of the establishment of the regular troops now in America, as to that relation which such establishment ought to bear to the civil governments in the colonies, *in time of peace*, consonant to what is admitted here in Britain, or at least in Ireland, so as to be as little as may be injurious to the civil constitutions ; but as the unaccountable embroilment of Indian affairs, and the hostile consequences that have taken place, give to business on the continent of America, *the face of war* ; I shall reserve my sentiments on this point to a more proper occasion ; observing only, that where the office and power, as now exercised, of a military commander in chief, are not absolutely necessary ; neither prudence, justice, nor sound policy can justify such an establishment. In time of peace it cannot be necessary : in time of peace the civil governments, in all their powers, as granted by commissions and charters, ought to predominate. If there be, in time of peace, in the civil governors, and other officers of the crown, the least subordination to this military commander in chief ; it will be found a dangerous thing to have given so much of
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civil power out of the King's hands, and to have done so little to maintain those, into whose hands it is entrusted.

The several points of government, as above, revised, maturely considered, and finally determined upon, and an administration formed, that shall firmly, uniformly, and constitutionally govern the colonies, by that predominate power, which the mother country ought to hold over the colonies, as corporations united to the realm, the people would become conscientiously in every individual, and constitutionally in their respective governments, disposed to receive the legal impression of the supreme government of the mother country, and to communicate the same through all its powers, so as to form, not a dependant appendix to the demesnes of the crown, but a subordinate united part of a one whole, this great commercial dominion of Great Britain.

These matters settled; the Indian affairs, the revenue, and the trade of the colonies come next under consideration. But for the same reasons, for which I have omitted to speak to the military establishment of the army in the colonies, I shall here omit to mention those measures for conducting Indian affairs, which, by men best versed thro'

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experience and success in those matters, have been thought most likely to maintain that relation which Indians and our colonies ought to bear to each other, and to derive that utility from these Indians, which in policy should be the reason and grounds of our connexion with them.

Government, by those ministers, whose department it is to superintend and administer the public revenue, having taken the points of the colony revenue under consideration, I must, for the present, think myself precluded from entering into the discussion of those points, which I had allotted to this part of my paper. However, I will just venture to suggest,—that the best and surest funds of such revenue, will be, first, the customs arising from the trade *regulated as hereafter to be mentioned*: secondly, a stamp-duty, which, if duly paid, will raise, from any supposed extent and number of people in the colonies, near a third more than it doth raise from the same extent and number of people in England. Next, the quit-rents, *if duly laid and duly collected*. But to obtain those points, a thorough revision of the state and laws of the quit-rents is necessary. There are people in the colonies, who, knowing the original defect of, and almost inextricable difficulties attend-

attending, the state of the quit-rents, have thought, that in those colonies, where the crown has a right to quit-rents, it would be a wise measure for administration, and an equal and easy one for the landholders, to establish a general moderate land-tax of * * * * * *per* hundred acres, in lieu of such quit-rents. And indeed calculations have been made, at a very low rate, on this measure, whereby the sum produced does greatly exceed what would be imagined on the first cast of thought, and fully equal to the ordinary expences of government in those provinces. But besides the difficulties, respecting the rights of the crown, which may attend this scheme, it is a point that ought very deliberately and dispassionately to be weighed, how far even the supreme government of the mother country can, consistently with general liberty, proceed in laying taxes on its colonies, where the consent of the people cannot be, in any constitutional way taken. The excise becomes another fund : but both in this, and in the stamp-duty revenue, a point will arise to doubt, how far these colonies, who, for the necessities of government, and the emergencies of service, have already, by their proper powers, laid these duties on the people, and granted the revenue arising therefrom to the crown, by acts which have received the consent of the

crown ; how far those colonies may, or may not, be supposed to have precluded any act of administration here on these heads.—

I mention this matter as a point of doubt, which would unavoidably arise ; but do not pretend to determine upon it. I will further venture to suggest, that, whatever revenues are raised, the *first and special appropriation of them ought to be to the paying the governors, and all other crown officers independent of the legislatures of the colonies.* — Under this general head of colony revenue, though perhaps not under the same department of administration, will come the consideration of a paper-money currency for the colonies. How far such is necessary, how far such is admissible, and under what regulations it ought to be admitted.

As the outrageous abuses committed by some of the colonies in creating a paper-currency, so far as to affect the course of justice amongst themselves, and to injure the interest of the mother country, hath not only occasioned that an act of Parliament was passed to abolish that fraudulent medium, and to restrain the making of it for the future, but hath also given cause of great prejudice against it in administration ; it may be of use here to suggest, that it is not only necessary

cessary to the commerce and culture of the colonies, that they should always have a *certain quantity* of this paper-currency: but that it is also the best policy, even for the self-interest of the mother country, that it should be permitted. The thing is palpable, and a matter of fact, that the colonies, even if permitted under the usual restraints, to trade with the French and Spanish colonies, are incapable of creating a silver currency, sufficient for the internal circulation, and external payments of their trade and commerce. They can derive none from the mother country, so long as the ballance of trade is against them. Their shop-trade therefore, the purchase and culture of settlements, and their external commerce must be so far forth obstructed, as such medium is wanting, where all the silver that any colony hath is scarcely sufficient for the circulation which its internal exchange and barter require. The imports from the mother country into such colony must be proportionably lessened; and that colony continuing in such circumstances, may, under every disadvantage, be drove to the necessity of manufacturing those commodities, which it could otherwise much better import from the mother country. But permit any colony to have a certain quantity of paper-money, and all that silver, which is no longer necessary at home, will con-

stantly go abroad to the mother country for the manufactures, and even luxuries of that mother country. This argument reaches only to the convenience and well-being of the colony, but in cases of emergency in war or invasion, the very being of these colonies may depend upon their being able or not, to create a sufficient supply for such cases. If therefore, instead of prohibiting these colonies in general from making paper-money, the government would, from a precise and adequate knowledge of the nature of money, whether paper or silver, fix some general rules for the colonies in this point, there could not be a more beneficial measure taken up for the welfare of the colonies, or the interest of the mother country. These rules would turn upon regulating the FUND, THE USES, and THE QUANTITY of *such medium*. The fund should at least be adequate to the payment of the principal *in a limited time*, and where the paper-money is treasurer's notes given for money lent to the government, the fund whereon it is borrowed should be also capable of paying, *ad interim*, a certain interest, as is the case of the treasurer's notes issued in the province of Massachusetts Bay. On the other hand, where the paper-money created, is government notes, deriving a currency from the authority and security of government, lent to

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to mortgagees on land or other security, where an interest is paid to government for this loan, the deposit of lands or chattels, thus become the *fund* for which the government makes itself responsible, ought to be sufficient for the re-payment in a given and limited time; while the interest paid to government ought to be appropriated to the making good all eventual losses which may arise in this scheme. This paper *being no legal tender*, the payment may be made in silver, not according to the tenor of the paper, but according to its proportionate value to silver at that time, while the government, if it has issued the paper on such terms as do not secure it against depreciation, is bound to make good the deficiency. On the contrary, after the expiration of the loan, and all charges of the loan office, and other charges paid, the benefit of the agency ought to accrue to government, the sole benefit which ought thus to accrue. This medium ought to be applicable to all the equitable, as well as legal *uses* of silver money within the colony, *except that it should not be a legal tender*. This exception is not meant to restrain, but to *secure the uses* of this medium; for when it cannot be forced in payment as a legal tender, this very case will oblige that legislature who creates it, to form it of such internal right constitution, as shall

force its own way on a level, *nearly equal* to silver. *The* QUANTITY ought always to be proportioned to the necessity of the medium wanted; which, (the fund and uses being fairly and absolutely fixed) may always be judged of by the rise or fall of the *value* in its general currency or exchange: for where the quantity issued is more than necessity requires, the value will depreciate: and where the fund is good, and all proper uses of the medium secured, so long as no more paper is issued than necessity does require, it will always hold a value near to, though somewhat less than silver. On this subject I here refer the reader to the following very judicious tract, written and given to me, several years ago, by a gentleman of Pennsylvania, conversant in these matters, both as a lawyer and a merchant. I print and publish it by leave of a near relation, and subjoin it as containing the most exact and decisive sentiments on this subject that I have any where met with. I entitle it, CONSIDERATIONS ON A PAPER-CURRENCY.



ALL value is given to things for their fitness or power to answer or procure the necessary conveniencies or pleasures of human life.

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This value may be considered as absolute or relative. Absolute value terminates in our esteem of any thing, without referring to any other ; relative is that, which it has compared with another. The latter only I shall have occasion to treat of.

Men have power to discover qualities in a thing, which shall give it value. They can by laws, customs, or fashions, greatly increase that value ; yet, to know or fix its worth or price, compared with other things *à priori*, has always been found beyond their reach and capacity.

This is owing to an inability to foresee, estimate, and govern exactly all the points and circumstances, on which the value of things turns, which are such as are in, or follow the nature and order of things in general, and then may be foreseen and judged of with some certainty ; or which consist of the passions, prejudices, and misapprehensions of mankind, whose number and influences we cannot rate or calculate.

From the *natural* state and order of things, I think it may be affirmed, that the worth or price of any thing will always be, as the quantity and uses amongst mankind ; as the
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uses directly, and as the quantity reciprocally or inversely. Use is the sole cause of value, and value the necessary effect of use. Abating these distinctions of cause and effect, useless and worthless, are synonymous terms. Every man must agree, that if you add to a cause, you must increase the effect; subtract from it, and the contrary effect must follow. Let the quantity of any thing be as 20, and the uses as 20, and let it have a value; let the uses be increased to 30, without enlarging the quantity; it is plain, the equal proportion that every man can enjoy will be as 20 divided by 30, $\frac{2}{3}$ ds only. But this being less by $\frac{1}{3}$ than each man requires, the demand for it, and consequently the value must rise. Subtract 10 from the uses when 20, and then under an equal distribution, each shall have double the value he wants, which must lessen the demand, and the value dependent upon it.

Governing the uses is one of the rational powers, that men have over the value of things.

Experience teaches the meanest understanding, that price depends on quantity, and that they are to each other inversely, or the more of one the less the other. Water is
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as necessary as any thing, and a diamond perhaps as little; yet the superfluous plenty of one has rendered it of no worth in most places, and the scarcity of the other has carried it to an extravagant price.

Limiting the quantity is another rational power men have over the value of things, and I do not know a third.

From hence it appears, that increasing the uses, and lessening the quantity, and lessening the uses, and increasing the quantity, must always have the same influence upon the rates and prices of things. Therefore, whenever I shew the effect of one, for brevity's sake let it be understood, that I suppose the same consequence will attend the other respectively.

Although I affirm, that variation in quantity or use shall cause a change in the price of a thing, yet I do not say, that this change shall be in proportion equal to the variation in the quantity or use; for I think the contrary. To instance in quantity, let it be in any thing as 30, and let the use be as 30, and it shall then have a mean value. The use unchanged, let the quantity be at one time as 20, at another 40. Whoever considers

siders the prevalence of men's appetites for a scarce commodity, under the dreads and apprehensions of wanting it, with their different abilities to procure it, on one hand, and their great contempt of useless excess on the other, must agree it is more than probable, that the difference between the means and the extremes shall not be the same in the prices, as in the quantities. Merchants, by experience, have found the truth of what I advance. I think they have observed, that lessening a commodity one third from the mean quantity, *cæteris paribus*, nearly doubles the value; adding a third, subtracts one half from it; and that by further increasing or diminishing the quantity, these disproportions between the quantity and prices vastly increase.

It is extremely difficult, if not impossible, to investigate these proportions mathematically; but events springing from use and experience have equal certainty in them, and to all practical purposes are as much to be relied and depended upon.

It is further worth observation, that whatever fluctuates much in quantity, and consequently in worth, will sink beneath its mean value.

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Suppose the quantity of any thing produced in every 50 Years be exactly the same: let the annual product be as *one* answerable to the necessities of mankind, then the value in each year shall be as one, and the whole equal to 50. But if the quantity of the annual product fluctuates, there will be annual fluctuations in the value; but as the proportions of the decrease of value, from experience above stated, will be greater than the proportions of the increase of value, this fluctuation will cause a deficiency in the mean value, which deficiency will always be in proportion to the greatness and quickness of the changes. This, I presume, is occasioned by the desire of mankind in general to rest on certainty, rather than rely on what is fluctuating and inconstant, though they should expect gain equal to the risque, and by the low circumstances of the majority of men, whose fortunes, in all prudence, direct to the first, rather than the latter. The case of insurances is an evident proof of this remark. If the insurers gain, which I think must be admitted, then they receive a premium beyond the value of the risque, and this gain the insured pay for *certainty* against *contin-
gent losses*.

These few rules of estimating the value of things, well applied, will, I presume, shew

shew when it is convenient to introduce paper-money into a country, and when it will prove hurtful ; what are its advantages and inconveniencies, general and particular, when introduced ; of what great importance it is to prevent an excess in quantity, and to extend the uses ; and nearly what its value will be in any given state.

If a nation has a quantity of money equal to its commerce, the lands, commodities, and labour of the people shall bear a middle price. This state is the best, and tends most to enrich the people, and make their happiness lasting. If they should mint paper to pass for money, the encrease of quantity in the former will lessen the value of the latter, will raise the price of lands and rents, and make the labour of such a people, and the commodities, be *rated* higher than in other places. Mens fortunes will rise in *nominal, not real value* ; from whence idleness, expence and poverty shall follow. Under these circumstances, their *real money*, instead of their commodities, shall be exported from them. Here the paper will be their bane and destruction. But if their commerce, or uses of money, exceed the quantity of it, their lands, labour, and commodities shall sink beneath their worth in other coun-

countries. Few purchasers of lands will be found in regard to the superior profit that must attend the use of money in trade: the *wealthy merchant shall be at the head of affairs*, with few competitions; he shall be able to grind down the farmer in the sale of his commodities, and, when those fail to support him, in the purchase of his lands. The artisan's labour shall be depreciated by the merchant who exports it, or the needy farmer that uses it. The wealthy only shall accumulate riches, the commonwealth shall decline, and in time farmers and artisans must desert the place for another, where their labour shall be better rewarded. Here the use of paper-money will shake off the fetters and clogs of the poor. Merchants will multiply; they will raise the price of labour, and of the fruits of the earth, and thereby the value of lands. An equal distribution of gain and profit shall succeed and destroy the partial accumulations of wealth.

I think these marks, taken from the value of lands, labour, and commodities, compared with their worth in other countries, will be found the only infallible rules to judge of an equality, excess, or defect of money in any place wheresoever; and consequently will, at all times, unerringly shew the necessity

cessity of increasing coins, or the contrary. Had a neighbouring province well understood and weighed these points, they had not created a paper credit far exceeding all their uses for money, when they were able to supply themselves with gold equal to their trade, nor at the same time have dammed up so many uses for it, which now cover them with clouds and confusion, that no man can see his way through. The best method they can use is to sink it as fast as possible, and not let their fund lie in Britain at an interest less than 4 *per cent.* when it is worth 6 in their own country, and their paper passes 50 *per cent.* less than the nominal value. But to return : when it is found necessary to add *paper-money* to the coin of any country, to support its value ought to be the main and principal view. This will turn upon the FUND, the USES, and the QUANTITY.

All value arising from the use, I beg leave to call *extrinsic*.

Having shewn that paper-money acquires its extrinsic value from the uses, which uses apparently may be increased or diminished ; I think it would be needless and mispending the reader's time, to demonstrate, that this value must be in direct proportion to the
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uses ; for it would really amount to no more than the proof of an axiom universally acknowledged, that the effect shall always be adequate to the cause. Therefore, in all future arguments, I shall take it for granted.

The fund ought to be as satisfactory to mankind as human wisdom can devise and furnish.

The community should become security to answer all deficiencies in the FUND ; this is not only the highest justice, but the best policy. It is just because it is a creature of their own, calculated for their private utility and advantage, and is in the management of the country by their representatives and officers. But when they receive an interest from the money, the equity of it is unanswerable : for it seems wholly inconsistent with justice, that one should receive the interest, and another run the risque of the principal. Policy requires it, because the community will certainly receive more profit from its credit under their support, than, with due caution, they can probably lose by accidents in the fund.

Our next consideration, with respect to the value, turns on *what* the fund is to pay,
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and *when*. These are arbitrary, being within the power of those by whose authority the money is emitted. But for the present purpose: let us suppose it is to pay silver money, according to the late Queen's proclamation, to the value of 1000 *l.* for so much of the paper, as, according to the *nominal value*, amounts to that sum at the end of 15 years. In this state the 1000 *l.* paper, *with regard to the fund alone*, at the time of its emission, is worth no more proclamation money than what will produce 1000 *l.* of that money at the end of the term, at compound interest, under as good security.

For example, take a 1000 *l.* paper, and let it represent that the possessor shall receive 1000 *l.* proclamation money for it at the end of 15 years, and let the use of money be worth 6 *per cent. per annum*; rebate 6 *per cent. per annum* with compound interest for 15 years, and you have the value of the 1000 *l.* proclamation money in hand, which appears to be but 417 *l.* 5 *s.* 3 $\frac{1}{4}$; more it cannot be worth, because 417 *l.* 5 *s.* 3 $\frac{1}{4}$, with 6 *per cent. per annum* compound interest for 15 years added, will amount to 1000 *l.*

On this state it appears, that the longer the term, the less the value, with regard to the

fund alone. From whence it follows, that by increasing the term, this value may be reduced to a degree beneath estimation. But whatever the value thus proved be, I call it *intrinsic*.

The FUND established, I proceed to the USES as they next require our attention in regard to the value of the paper-money.

If value, in respect to the uses of things, shall always be in direct proportion to those uses, (which I presume have heretofore proved in general, and shall hereafter shew is true in relation to paper-money) and we design to raise the power, it follows clearly, that to bring this to pass, we ought to give it all the uses of money, or coined gold and silver in other countries. From these uses alone it must derive all the worth it shall bear beyond what I called the *intrinsic* value. For the purpose take the case stated on the Fund only, that the possessor of 1000 *l.* paper shall receive 1000 *l.* proclamation money in exchange for it, at the end of 15 years. On this account the paper appeared to be worth but 2 *l.* 15 *s.* 10 *d.*. But suppose this 1000 *l.* paper may be immediately exchanged for 800 *l.* proclamation money, which is 2 *l.* 14 *s.* 8 *d.* more than the intrinsic worth,

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how has it acquired this exceeding price or value? I think plainly from the uses. To prove the truth of this, suppose all the uses as money taken away; unquestionably then the worth of 1000*l.* paper in proclamation money will be reduced to what I call the intrinsic value; because, depending upon the fund alone, it will be exactly in the state of a fund to be paid at a future day; for in neither case can the creditor use it in the mean time. But if the creditor can by any contrivance use the sum in that time, as he may the paper when it passes for money, that use must be something worth. And when experience shews, that under this use the value advances from 417*l.* 15*s.* 3½ to 800*l.* I apprehend it is evident to a demonstration, that the difference is derived from the use. To deny it must be as irrational and absurd, as if, upon adding and extracting an ingredient to and from a composition, we perceived properties in the composition appear and disappear, and yet were to deny that such ingredient was the cause of those properties. This leads me to attempt the solution of a question I have known frequently made. If we in Pennsylvania, upon a sufficient fund answerable in silver, at a future day, mint a quantity of paper equal to the uses of the people for money, and they will-
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ingly and universally accept of the paper in all payments, why should it not, at all times, have *value equal to the nominal value*, or to the sum chargeable on the fund at the day to come. This reason, urged by many, to support the paper to this degree, is drawn from the nature of money in general. Money, say they, is but a ticket or counter, which represents to the mind of the possessor a quantity or degree of power. No man, on the receipt of it, ever examines how, or from whence it acquired that power, but in order to discover its reality and duration. For instance, when an English crown is received, does the acceptor regard any properties in the metal, or the figures of it, but those which are to convince him that it is what it appears to be? a crown. It must be confessed, he does not. If so, then why may not a piece of paper, under distinguishing characters and impressions, affixed by law and common consent, have the power of an English crown annexed to it? It is to pass in the same manner as a crown does, and in the end will as certainly be a crown as the real one.

Therefore they conclude, that the paper may, and ought at all times, to be esteemed equal

equal to the quantity of silver the fund is to yield for it at the end of the term.

I confess I think this reasoning fair, and the conclusion just and satisfactory, if we do not use silver in our *commerce, foreign or domestic*: otherwise not. The fact is, we do use silver *in our foreign commerce*. I presume it will be easily admitted, as the paper represents the silver in the fund, and from thence obtains its credit, that it shall always be at least of equal use with, or be as readily received as paper. Then if silver in hand has one power, *one use more* than the paper, to wit, that of procuring foreign commodities, it is impossible we can esteem them equally. For that would be to controul the different virtues and influences of things over the mind of man, which necessarily depending upon the things themselves, no laws or consent can, by any means, vary or direct. Wherefore, in the case stated, it seems to me certain and undeniable, that the paper must have less worth than the silver.

Having said, that the uses of the paper should be as many as possible, it may be proper for me to speak of some of those uses, the equity and advantage of which have been very much contraverted. But here let it be understood, that I proceed upon the case
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last stated, that the quantity of paper is to be equal to all the uses of money *within* the country. For that state, and a partial supply of paper credit, differing in principles, require different reasoning, and infer quite opposite consequences.

First, then, it seems just and reasonable to compel all persons contracting for silver money, after the law that raises the paper money to be paid in the country, to receive the paper in lieu of it, and at the value struck from the fund, although that be inferior to the real value. This perhaps may not be strict equity *between the contracting parties*, but it is just *from the community*, who have power from the consent of every member, by laws, to prohibit the exercise of a particular natural right inconsistent with the welfare of the whole, and to inflict a penalty upon disobedience to the law. To use silver or gold with the paper, must depreciate the latter. Therefore the law forbids it. This can't be unfair, because every man has notice of what coin he is to be paid in, and *is not obliged to exchange more for the paper than he thinks agreeable to the real worth*. And if any should endeavour such use, the loss of the difference between gold or silver and paper, is a kind of penalty &c

violating the law, which must be as just as any other penalty imposed on an act, *not evil in itself, but prohibited only.*

Again, upon breach of contracts for payment of money in foreign countries, I think it both convenient and right, that satisfaction should be made in the paper. The convenience of it will appear, if we suppose the debtor a member of the society amongst whom the paper passes; for as such, being restrained by law from trafficking for gold or silver, and thereby disabled from procuring them, he must either pay paper in compensation, or lie in a goal, if the severity of his creditors requires it. In these circumstances, no man in his senses would dare to contract a foreign debt, or transfer foreign money in the usual manner, by exchange; the bad consequences of which are too numerous and obvious to admit of, or need particular mention, and evidently prove the convenience of allowing satisfaction to be made in paper.

The equity of this satisfaction will be indisputable, if the debtor pays a sum of paper really of equal value with the foreign money. It is the common case on breach of specifick contract. If it cannot be performed,

ed, the most exact justice requires no more than *an equivalent compensation*.

Some persons imagining the real worth of the paper equal to the nominal, have affirmed, that it ought to discharge these debts *at the nominal value*; others confessing a difference between these values, under some political views, have asserted the same. As I shall have occasion to speak on these opinions hereafter, upon a point similar to this, I shall only add here, that if this mode of payment should take place, it would as effectually destroy foreign credit and negotiations by exchange, as if gold or silver were to be insisted on here, to discharge a foreign debt. In one case, it would be the highest imprudence to be the debtor, in the other, it must be equally indiscreet to become a creditor.

Pursuing the uses, I come to that of discharging by paper, the silver debts contracted antecedent to the law that raises the paper.

To shew the necessity of admitting this, I suppose it will be granted me, that there must at all times, be a very great number of debtors who depend on their future labour



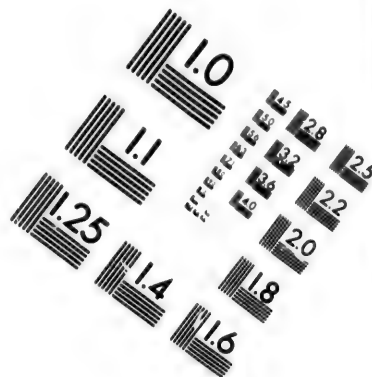
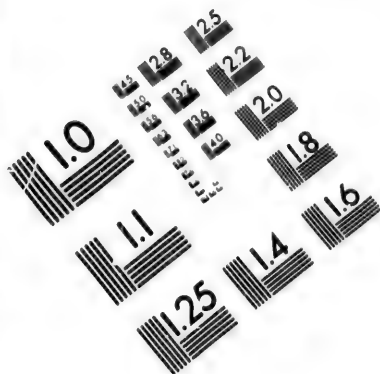
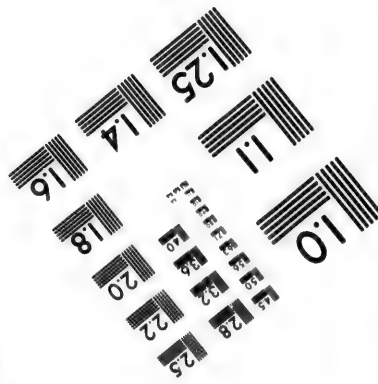
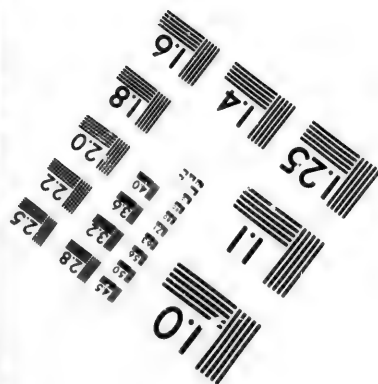
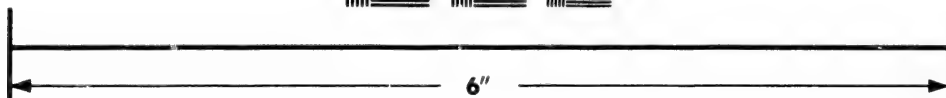
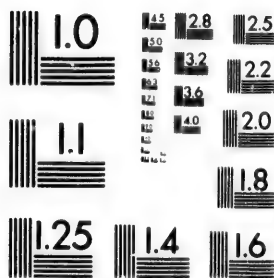
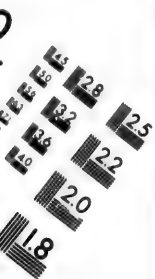


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bour and industry to pay their debts. This dependence is reasonable and just, founded on the natural right of all fairly to purchase silver, the then current money of the country. The debtor has the continuation of this right in view and expectation at the time of his contract; without it he cannot be supposed either prudent or honest to borrow. If then, for the convenience and advantage of the whole society, this right must be taken away by a subsequent law which he could not foresee, it cannot be agreeable either to reason or good conscience, to exact a payment in specie; for that would be requiring a performance when we had expressly taken away the means. Therefore I think it clear in respect to the debtor, that the paper should have this use. But how will this stand with the right of the creditor, who upon the contract as certainly expected to be paid silver, as the debtor did the opportunity of acquiring it to pay.

I presume, if he receives as much paper as shall be equal in power or value to the silver, it will be just in itself, and perfectly satisfactory to him. But can any man offer so high a degree of violence to his own reason, and the understanding of others, as to affirm, if he is forced to accept less, that

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Still he has justice dispensed him. If I borrow 100 £. in silver before the law, under agreement to repay it at the end of the ensuing year, and before the day of payment the law takes place, commanding the lender to receive 100 £. paper for it, which shall be worth, or have power to procure 82 £. silver money only; with truth can this be called a rational or upright law? Certainly no. Nor shall it be any justification to me in conscience to detain 18 £. of my creditor's money.

The rules of natural justice flowing from our fixed and unchangeable relations to each other, and the invariable nature and order of things, enforced by the express commands of God, are of eternal and indispensable obligation. No laws, no combinations of human power, customs, usages, or practice, can controul or change them. We may, by the consent of a majority, tie up the compulsory hand of the civil magistrate, and thereby dissolve the power of coercive laws, but can no more absolve from the moral duty, than we can reverse decrees inrolled in heaven. If my debtor should be so extremely weak, as to suppose this not criminal because it is legal, (which I think next to impossible to imagine of a rational creature,

creature, and I make bold to affirm, never was the case of a creditor of understanding, sufficient to know the measure of his demand) his opinion perhaps may serve for an excuse, or extenuation of his crime, but never can prove the rectitude of the act, and still the guilt must rest somewhere. The law-makers, the authors of his mistake, are culpable, unless they are under the same delusion, which is yet more difficult to apprehend. Some, who give up the justice of the law, defend their practice under it, by saying, they are creditors as well as debtors; and as they are obliged to receive, so they should have liberty to pay. Alas! what feeble arguments satisfy, when they are cast into the scale of interest, and gain is the consequence of conviction. If the actions of men towards us are to be the measures of our dealing with others, then he that is cheated by any person, may justly plunder the next he meets. And truly I can't see why it should stop here; for as we may be many times defrauded, and not know it, to be secure, and keep the balance on the right side, we should pillage our neighbours as often as an opportunity offers. This may seem severe reasoning, but really I think it fair from the first position; that because one keeps back part of another's due, therefore

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fore he may honestly detain the right of a third innocent person.

Again, paying an equivalent cannot be injurious to the debtor. For suppose he pays 120 *l.* paper. If 100 pounds worth of coin'd silver, reduced to bullion, will then yield him so much, what does he more than perform his contract to pay 100 *l.* of coin'd silver? seeing a compleat recompence is perfectly consistent with the right of each contracting party. Any remaining objections must arise from its being hurtful or injurious to the society in general. This has been asserted, and endeavours have been used to support the truth of it, by this kind of reasoning.

First, if the law should oblige the debtor (for the purpose) to pay 120 *l.* paper in lieu of 100 *l.* silver, the legislature would thereby confess the inferior worth of the paper, which will be attended with this ill consequence, that the general current value of the paper shall be less than if the law had declared it equal to silver.

Secondly, That lessening the current value will be a loss to the society in general. To the first, That obliging to pay a larger sum
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of paper for a less of silver, acknowledges an inequality of value under the like denominations is self-evident. But from thence to infer, that the paper shall pass in general, at less value than if they had been declared equal, with submission, I think mistaken, and inconclusive reasoning.

To be clearly understood, permit me to examine this upon the fact. Suppose the law, in the strongest terms, enacts that the paper shall be in value equal to silver money, according to their several denominations. Carry the paper from thence to use, by offering it in exchange or payment for some commodity, and then I ask a short question, Who it is that really sets a value on the paper, the legislature, or the person that has the commodity to sell? If it be answered the first, then I say, this cannot be, unless they also limit the price of the commodity. For if the seller can raise and proportion the price of it to what he thinks the real worth of the paper, the law maker's declaration notwithstanding, it is he that strikes the value, and not they. For instance, put the case; a farmer, just upon emitting the paper, has a bushel of wheat to sell, which he rates at, and will not part with, under three silver shillings. The future current worth of the paper being unknown to him, let him by
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gues imagine these three shillings equal to four shillings paper. A purchaser then presses him, under the influence of the law, to accept of three paper shillings for this wheat; but he, without regard to the law, according to his own opinion, demands and receives four shillings for it. Will any man say, the legislature determined the value of the paper here? Apparently the seller did. For the legislature commanded, that the three paper shillings should be valued at three of silver, but the farmer has made his estimate at three fourths of that value only. Unquestionably the vender must always have this power, unless, as I said before, the law-makers can limit the price of all commodities, which is not practicable, consistent with the order of things, or the preservation of men's properties. But it may be alledged, although the receiver of the money is not bound to observe the legislative command, yet still it may have some weight. He may consider it to be the impartial opinion of the wisest part of the society, what the future current value of the paper shall be, and thereby add, in some degree, to its worth.

In answer I must observe, first, this gives up the point of power, and changes it to a matter of meer advice. Then, supposing that
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of any import, surely delivering it in a mandatory way, will be very little able to produce the desired effect. Imperative advice (pardon the expression) favours too much of selling the rabbit, to prevail or persuade. In short, the words command and advise, convey two ideas so widely different, and so opposite and repugnant to each other, that it is absolutely impossible we should take the first for the last. But granting it to be interpreted as a piece of cordial advice. Shall it be received implicitly, and pass without any examination? I presume not. When it comes to be examined, if the people should be informed, that, upon a nice examination, the legislature had found a fourth, fifth, or sixth difference between silver and paper, as such calculations are generally out of the reach and comprehension of most, it seems not improbable that the paper might pass at first, agreeable to the given difference. *I say at first*; for I contend, if the calculation should be erroneous, (which the use of the money in time will discover) this effect shall not be lasting. But if, on the contrary, they learn that the paper, without any calculation, by guess, was pronounced equal to silver, which every man's judgment, who knows the superior power of the last, must disapprove of, what influence can the legislative advice then have? Undoubtedly it will

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will be universally rejected, and each person turned at large to make his estimate as well as he can, without the least regard to the legislative opinion.

Once more, take it, that the quantity of silver in 100 shillings proclamation money is now worth 120 paper shillings in Pennsylvania, and suppose this requisite had hitherto been omitted in all laws relating to the paper: let the supreme authority to-day enact, that from henceforth all persons shall give as much for 100 shillings paper as they do now for that quantity of silver, would this make the least alteration in the current value of the paper? Might a man, with reason, expect to buy more bread or wine to-morrow with 100 paper shillings, than he can to-day? If the legislative power can bring this to pass, perhaps it may prove more than some people desire; for I conjecture it will shew, that we never had any occasion for paper. Whatever quantity of silver we had amongst us, when the paper was struck, might have been extended in value proportionable to our wants, and all the business of paper-money done at once. The absurdity of this lies open to the meanest capacity; yet I aver, that to raise the value of paper by authoritative words or commands, is equally irrational and unfeasible.

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I know no just means whereby mankind can give value to things, but increasing or lessening the *uses* or *quantity*. The paper derives its *intrinsic worth* from THE FUND which is stable and fixed. The *uses* give it further value, but that shall always be in inverse proportion to the quantity. The quantity is absolutely under the direction of the legislature, but the *uses* not. As they are raised, so they must be limited, by our necessities, and the disposition and order of things. The utmost the legislature can do, or is needful to be done, is to make the paper answer *all those uses*. When they have ascertained the FUND, the *uses* and *quantity*, their power expires. And the current value, if the people receive it, flows from them by so unavoidable and a necessary consequence, that whatever the legislature, or others will or do, (if it alters not the fund, *uses*, or quantity) can work no change in it in general. For a time, as long as people are ignorant, I confess it may; but when experience, that excellent mistress, has disclosed what worth they give, all imaginary value shall cease and vanish, and on the three requisites, as on a solid and firm foundation, it shall ultimately rest and settle.

I conclude what I have to say on this point with a short observation. That all the
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attempts of assemblies in America in this way, even by penalties on disobedience, have proved fruitless and abortive. And it has been extremely remarkable, that although transgressing the law, by making a difference between silver and paper, has been every day's practice, not in secret, but openly, I have never heard, that any person has been so much as questioned publicly, or has lost any degree of reputation privately for doing it. So far do the dictates of just and right reason surpass and transcend the force and power of any human device or institution, that opposes or contradicts them.

I come now to consider the second position; that lessening the current value will be disadvantageous to the society in general.

This cannot be maintained without proving, that it will occasion a loss, or obstruct some gain.

A society can gain but two ways, from the earth and from their neighbours. When I say from the earth, I do not mean from her simple productions only; for I include therein mens labour and manufactures upon them afterwards. Excepting distinction, which has no weight in the present question, they can lose only by the contrary, neglect-

ing the fruit and product of the earth, and suffering their neighbours to carry away their wealth.

I presume it will be very hard to shew, how a different valuation of the money can influence the industry of the land-holder or the artisan.

Upon the quantities of the fruits of the earth, and manufactures produced, entirely depend the wealth of the country. A farmer and tradesman, for a certain portion of their commodities one year receive 8 shillings, and with them can purchase an ounce of silver. The money being raised in value next year, they can get but 7 shillings for the same quantities; but still that sum will buy an ounce of silver. Can this difference, in the value of the paper, cause the one to till more or less ground, or the other to make a greater or less quantity of his manufacture? What is it to them how the money is rated, if they receive and part with it at the same value? Gold, comparing quantity to quantity, is more valuable than silver. If silver was to vanish out of the world, and gold should be made the only medium of commerce, can any one imagine that mankind would grow more industrious to procure it, because more valuable than silver,

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silver, when the quantity they shall get must be proportionably less? Do we in fact find these different effects from gold or silver at present? I think we may as reasonably expect, that varying the measure of the bushel or yard, will induce people to make more or less corn or cloth, as that changing the value of the money, which is another kind of measure for commodities, should excite or abate men's diligence to raise and make them.

All gain from our neighbours must be by getting their money or their goods. These are to be acquired only by conquest or commerce. The first I pass over as impertinent to this purpose. Then let us see whether advancing the value of the money can reflect any gain to us from them in the latter. Gain in trade may be considered as derived from the manner of the measure of it. The manner of trade in general is of short circuit, and consists of importing foreign money or commodities, and the exportation of our own. In these negotiations we shall find the worth of the paper, affords us no advantage over, or opportunity to get from our neighbours.

Suppose a foreigner imports 800 l. proclamation money, and finding That not the
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medium of our commerce, proposes to exchange it for paper. Let the value of the paper be such, that he can get but 800 l. of it for his silver. With the paper he purchases corn, which he transports. What have we got from this foreigner? 800 l. in silver. Should we have got less had he received 1000 l. for his silver, and with it bought the same quantity of wheat? Certainly no. Neither case makes us richer or poorer than the other; and the same consequence will be found to attend all foreign imports whatever.

When we export our commodities, the value of the paper is quite out of the question; for in their sales, or the returns, it is in no sort concerned. If we send the paper abroad, and sell it, unless it be kept in expectation of what the fund will yield for it at the end of the term (which I intend to speak to hereafter) we shall find it but an exchange of merchandizes between us and them. For the seller brings the goods he receives here, and the buyer, by means of the money, carries back our goods; the paper is but a measure, as it was in the case of imports and exports in return; and if it be rated alike abroad and at home, no loss or gain can ensue to either country, or to the traders from a high or low valuation of it.

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He, that is not satisfied by these reasons, may perhaps be convinced by the experience of others. The coins of England being finer than those of Holland, quantity to quantity, are of more value ; but was it ever thought the English had therefore more power or traffick, to obtain the money and merchandize of other nations, than the Dutch ?

Were it possible that the profit of trade could be affected by lowering the coin, that cunning and skilful generation would hardly have debased theirs by design, much less have continued for so long a time as they have done. The paper-currency of New England, by a great excess in the quantity, is sunk to a shameful degree. From hence we hear of much fraud and dishonesty amongst them ; but it was never yet objected that it injured them in trade. In truth, if it had, as they principally subsist by commerce, they must have been ruined and undone long ago.

The currencies of North and South Carolina are in the same condition ; but still their trades go on as usual, without the least alteration. In respect to the measure of our commerce, it is evident that cannot be impaired by reducing the value of our money, unless we are thereby deprived of a suffi-

ent quantity to carry it on : for instance, if 60,000 *l.* proclamation money be necessary to carry on all our trade, and we strike 60,000 *l.* paper, in hopes it shall have that value, upon experience it proves worth but 50,000 *l.* proclamation. Then, for want of the remaining 10,000 *l.* some of the wheels of trade must stand still or move slower, which apparently will obstruct a part of our gain. But the impediment vanishes, by raising an additional sum of paper equal to the 10,000 *l.* deficiency. The power of doing this we have hitherto enjoyed and exercised without any restraint; and probably shall retain as long as we use it with discretion and prudence.

Seeing then, that by raising the value of our money, we are not likely to get any thing from our neighbours, let us now try whether by lowering it they can get any thing from us. I presume I have proved, that in common commerce, receiving and returning the money for merchandizes, they cannot; consequently no method remains, but keeping the money to receive silver from the fund at the end of the term. By these practices, they can gain from us only upon one supposition. That they purchase the money at less than what I call the intrinsic worth; for if at more they lose by it, and we gain from

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from them. I have shewn, rating interest at 6 *per cent. per annum*, that 1000*l.* payable at the end of 15 years, is worth 500*l.* to take a round sum, in hand. If our neighbour can buy it for 400*l.* he gets 100*l.* from us. But on the contrary, if he gives 800*l.* for it, he loses 300*l.* For he lends us 800*l.* for 15 years, at 2*l.* 8*s.* *per cent. per annum*, when it is really worth 6*l.* and the difference, which on computation will be found in the whole to amount to 300*l.* or nearly, we gain from him. But neither of these cases can possibly happen while men have the least capacity to discern and preserve their own interest. Indeed I have never heard one sound reason, either moral or political, for this manifest deviation from justice and equity. So far is it from good policy, that if I am not mistaken, it must work an effect contrary to the design; and instead of supporting the credit of the paper, undermine and diminish it.

The publick authority is guarantee for the payment of all just debts. Every body must agree, that the value of paper money is nothing but so much publick credit. Now, is it possible for the publick authority to break its own engagements, in respect of the payment of debts, without in some degree blasting

ing that credit which is to be the support of the money? Publick and private faith are, in this respect, exactly alike; and it is as easy to see how violating one publick obligation shall impair the value of the paper-money, as how a known breach of private contract in a goldsmith should lessen the worth of his bills or notes.

A second inconvenience attending it, is loss of foreign credit, which must be a great misfortune to a trading country. This is occasioned in the same manner, by which I just now shewed the value of the money might be affected; and let it not be thought amiss, that I mention a third inconvenience, namely, prostituting and debasing the dignity and excellence of the divine and moral laws in the eyes of the people, and encouraging them by ill practices and examples, to depart from true honesty and virtue. For if a man can once believe, he may justly, by human authority, transgress those laws, he loses much of the due and necessary Respect that ought to be paid them, and shall afterwards be able to resist their checks and admonitions with greater ease and facility: and he that owes to 20 people, and pays them with five sixths of their due, and sees his neighbour do the like, under colour of law
to-day,

to-day, will, I am afraid, with less regret and compunction, defraud his creditors without a law to-morrow.

But now, granting entire recompence ought to be made, it may be asked how the quantum of paper to be paid for antecedent silver debts shall be ascertained.

The legislature cannot settle it with exact justice, because no skill can discover what the future current value shall be; and if the people are left to do it themselves, it will introduce many law-suits and oppressions, and still they may be as far from right as if the legislature had done it. The greater inconveniencies in the latter, rationally determine the power to the former. When they come to exercise it, if it is the first experiment of the kind, I imagine they can do little more than guess at the value. But as it is within demonstration, that the paper cannot be equal to silver, surely it ought not to be rated so. Impartiality requires the guess to be as near as may be, and then, although it may be mistaken upon the laws of change, it may be perfectly equal, because either party may lose or gain. It is a common case in life, and must be always so in untried things, and no man can justly complain of the

the event, because all errors are owing to our weakness, not our faults.

If any of our neighbours have issued paper-money, the value of theirs will afford us strong lights to discover the worth of our own, and allowing for different circumstances, we ought to rate ours as they have found theirs upon trial. But when experience has taught us the true worth of the money, all difficulty ends, and whatever debts or pre-contracts remain (as many from their growing nature must) should be satisfied according to that Value.

I have now run through all the uses that occur to me worthy of observation; and therefore shall proceed to the quantity.

When it is designed, that paper shall be the only money of a country, the quantity, according to the nominal value, ought to be, as near as possible, adequate to the uses, or in other words, to all commerce, foreign and domestick. It is easier to see the truth of this rule in speculation, than to reduce it to practice; because the number and extent of the uses of money, in a populous and industrious country, are far beyond our knowledge and comprehension. From the circumstances of other places, the quantity
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of money current before issuing the paper, and the value of the exports, rational conjectures may be formed, but experience alone can teach us what sum will suffice. To strike the necessary quantity at once, would be most advantageous to the society, and equal with respect to individuals; but as that cannot be known, let it be approached as near as may be. And since we may expect to err, I presume it will be better to err on the side of deficiency than excess, seeing additions are easy, but subtractions oftentimes very difficult after emission.



FROM the above reasoning, the following propositions, which I apprehend to be truths, do arise. That in colonies, the essence of whose nature requires a progressive increase of settlements and trade, and yet who, from the balance of trade with the mother country being against them, must suffer a constantly decreasing quantity of silver-money, *a certain quantity of paper-money* is necessary. It is necessary to keep up the increasing operations of this trade, and these settlements; it is also necessary, in such circumstances, to the equal distribution and general application of these benefits to the whole colony, which benefits would otherwise

wife become a monopoly to the *monied merchant only*: it is prudent, and of good policy in the mother country to permit it, as it is the surest means of drawing the balance of the colony trade and culture to its own profit.

These reasonings further show, how by securing the *fund*, extending the *uses*, and regulating the *quantity*, this measure of a paper-currency may be carried to the utmost extent of which it is capable. Nor do they stop here; for as they give the rule whereby to judge of the excess or defect of money in any place whatsoever, so do they, at all times, shew the necessity of increasing it, or the contrary.

Although the reasonings, which, from my own sentiments of the matter, I have applied to this subject, and those, with which I am able to oblige the world, by publishing the above very judicious and able tract, do perfectly coincide in these points: yet upon the point of the *uses*, in considering the remedies to be provided against the iniquity of any fallacious depreciation of this paper-money, our reasonings seem to divide on quite different sides of the question. The author of the above tract asserts, that in colonies, where paper-money is created, the people of that colony

colony *should be compelled by law to receive* it in payments: and he states two or three different cases in proof of his assertion. My opinion suggests, that this paper-money ought *by no means to be a legal tender*: and yet, different as these propositions may appear, they will be found to coincide in the application of the remedy; in the only proper and radical remedy, *the not permitting the paper-money to be a legal tender*. This gentleman experienced in the politicks of the colonies, and knowing the danger, if not the impracticability, of any legislature in these colonies adopting this maxim, takes up the reasonableness and necessity of this paper-money being forced into payments by law;—but then, in all the cases wherein he states the remedy in equity, against the injustice, which may arise from the artificial value of this paper-money thus declared, he firmly and justly declares, that the payment thus by law forced upon the creditor *in paper, ought not to be according to the nominal legal value* of that paper, but according to the real value, an equivalent to the debt.—This judgment totally destroys the maxim of its being a legal tender. In the application therefore of the remedy, our opinions do not differ, but the truth of them becomes the more elucidated by this coincidence of two thus seemingly different propositions.—

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I will therefore proceed in saying; that by the reasonings above it appears, that the only and proper remedy, against the iniquities of a fallacious, depreciating paper-currency, is *that radical one, of not permitting this paper-money to be a legal tender.*—On the other hand, so confirmed am I in my opinion of the necessity and propriety of *a certain quantity* of paper-money in the colonies, that were I not convinced, that the restraining of it from being a legal tender, will not destroy the existence of it, but, on the contrary, amend its currency; I would even sacrifice my conviction to this point of utility: but whatever apparent value this paper-money may seem at first view to lose by restraint of this one use, this very restraint, (if the colonies will have paper-money) must become an occasion of so meliorating and securing the *fund*, of so exactly regulating *the quantity*, and of adding some *other valuable use*, namely an interest, or some premium equivalent to it; that the paper-money shall become thus intrinsically, and of its own nature, a better and surer currency than all the power and authority of government could make it. For not being forced into currency, by any external value derived from authority, it must, like bullion in coin, derive its currency from its intrinsic value and applicableness to the purposes of money;—

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so that thus becoming, from necessity, a more determinate measure, a more practical instrument of trade, and a more beneficial deposit, as bearing an interest even while in currency, it becomes to have *all the uses* of bullion in coin, and one more,—so as even to bear a premium,—which in fact is the case of the treasurer's notes in the province of the Massachusetts-bay in New England, though they are not a legal tender.

However, here, as on every other point, I have stated the reasonings on both sides of the question :—I have brought the question to its issue, and left those, whose duty it is, and who have a right to do it, to determine the question.

If with the same spirit, guided by the same principles, a revision was made of the laws of trade, so far as they respect the colonies, it would answer more wise ends of government, and more the interest of the governed, both here as well as in the colonies, than any endeavour, even though successful, to carry the present laws into execution.

The principles on which the act of navigation is founded are just, and of sound policy,

licy, but the application of them, by the modes prescribed, as the laws now stand, to the present state of the colony trade, is neither founded in justice or prudence. Any spirit that would force this application, would injure the principles themselves, and prove injurious to that commercial interest, which those very acts of trade mean to secure to Great Britain: whereas, upon a due revision of those laws, it would appear that there are means of producing this same end consistent with the particular interest of the colonies, and what would carry the general commercial interest of the mother country to the utmost extent that it is capable of.

The general principle of the laws of trade regulating the colony trade, is, that the colonies shall not, on one hand, be supplied with any thing but from a *British market*, nor export their produce any where but to a *British market*. In the application of this principle, the present laws direct, except in some special particulars, that the colonies shall import all their supplies *from Britain*, and carry all their produce *to Britain*.

If now, instead of confining this market for the colonies to Britain only, which is a partial and defective application of the general principle whereon the act of Naviga-

tion is founded ; this colony trade was made, amidst other courses of trade, an occasion of establishing *British markets even in other countries*, the true use would be derived to the general interest from these advantageous circumstances, while in particular the colonies and the mother country would be mutually accommodated. In the first case, the general interest, perverted to partial purposes, becomes so far forth obstructed ; in the second, it is carried by the genuine spirit of it to its utmost extent.—If, under certain restrictions, securing also those duties which the produce of the colonies, carried to market, ought to pay to the mother country, the colonies were permitted to export their produce (such as are the basis or materials of any British manufacture excepted) directly to foreign countries, if so be they sold it to any *British house* established in such place, and were also permitted, if they bought their supplies from a *British house* established in those parts, to supply themselves with the natural fruits and produce of that country (all manufactures that any way interfere with the British manufactories excepted) paying there to some British officer, or upon their arrival in the colonies, the same duties as they would have paid by purchasing the same commodities in England, every end proposed by the principle of the act of navigation would

be answered; the exports of the colonies would be encouraged; and *the British market* greatly extended.

The colonies would not only trade to, and be supplied by, a *British market*, but would become an occasion of establishing that British market in foreign countries. The same reasons of commerce, which, in a narrower view, became the grounds for establishing factories at Peterborough, Riga, Hamborough, Lisbon, Cadiz, &c. would, on a more general and extensive basis, become the foundation for establishing and building up *these British markets* in every region to which our trade extended itself; for while it necessarily enlarged the special interest of the colonies, it would enlarge it only at British markets, and to the final profit of the British general commerce. The profits of such market finally centering in Great Britain. If this maxim be not true, that the profits of the factories settled in foreign ports finally center in Great Britain, the measure of establishing such is false in policy; if the maxim be true, the permitting our colony exports to go directly to the ports where such factories are established, is not contrary to the principle on which the act of navigation arose, but becomes coincident with, and aiding to it, in extending the British navigation

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If this method of reasoning be found not contrary to the principle of the act of navigation; if this measure, at the same time that it encourages the trade of our colonies, is found to do it in a way subservient to the general commerce of Great Britain, extending the British markets, and securing the final ballance of profit to Britain only; if this spirit of administration, so far as government has a right to direct the course of trade, be adopted in this part of it, the great points which it has to secure, are first, that the colony exports to, and the supplies purchased by them from these foreign ports, *be sold and bought at a British market only*.—The government has a right to extend its laws to these colony traders, and to the factories established in foreign ports.—It can therefore, partly by such laws as it finds proper to enact, for the regulation of this factory trade, and partly by obliging these colony traders to give bond before their departure from the colonies, secure and confine all these transactions of that commerce, which is permitted at any such port, to a British market only, the laws that established these being a favour extended to the colonies, and promoting the interest of these factories,

would, as all laws of trade should do, execute themselves; and, by giving the requisite powers to a consul or naval officer resident there, would be easily administered by such officer.

The next point to be guarded, would be the securing those duties which this trade ought to pay to the government of Great Britain; if the same duties were paid, or security for them taken in these foreign ports, as would be or should be paid by the colony trade, if the traders were still obliged to come to Britain, every end would be answered to the government revenue, and these charges might be sufficiently secured, by obliging all these traders to sail under bond. The arrangement to be taken in such case, ought to be that of adding to the office of consul such powers as in the colonies, before the establishment of special revenue officers there, were given to the naval officer, or to establish a naval officer. The consul or naval officer, in this branch of his administration, should be subordinate to the commissioners of the custom and the Lords of the treasury. If the duties were collected by him, in the ports of his district, he should account and give security for the same; if bonds only, as security for the payment at such British or plantation ports, were given, he should keep the register of the

the same, and correspond with the commissioners of the customs, and such officers as they direct, as to the fulfilling, cancelling, or prosecuting to effect said bonds. These general arrangements taken, together with such further special regulations, as the experience of the commissioners of the customs should suggest, the revenue of the colony and factory trade, under this mode of administration, would be well secured, cheerfully paid, and easily collected.

Under the administration of such measures, there does not appear any reason why all the produce of the British colonies, which are not the basis of, or do not interfere with the British manufactures, might not be carried directly to a British market at a foreign port, —and why the carrying of rice to foreign ports might not be extended, under these laws, to all such foreign ports whereat a British factory is established. — Nor under this mode of commerce can any sufficient reason upon earth subsist, why the colony traders should not be permitted to load at these ports, the fruits, wine, oil, pickles, the produce of that country, and also such raw unmanufactured produce, as would not interfere with the manufactures of Great Britain, instead of being obliged to come to Britain to buy here, after the expence of

an unnecessary voyage, those very commodities which they might have bought in a *British market*, at the port which they left. Why not any of these as well as salt, as well as wines from the Madeiras and western isles? In the same manner, by the same law, our colony traders, permitted to carry sugar, ginger, tobacco, rice, &c. to such ports in the rivers Weser and Elbe, in the Sound and in Russia, whereat a British factory is, or may be established, why may not, (the two points of a *British market*, and the revenue of the duties being secured) why may not these traders be permitted to load at these ports directly for the colonies, hemp, yarn, and such coarse linens, as do no way interfere with the British manufactories? These measures taken, which would prove to be the true means of encouraging the colony trade, the best method to put a stop to the contraband trade carried on in this branch of business, and the true grounds whereon to establish the general commercial interest of Great Britain, the government could not be too strict in enforcing the execution of the laws of trade, nor too severe in punishing the breach of them.—Wherever they found these traders endeavouring to carry from these ports to the colonies raw-silk, silks, velvets, foreign cloths, laces, iron, steel, arms, ammunition, sails or rigging, or any manufactures

tures whatever, that interfere with the manufacture of Great Britain, whenever they found these traders endeavouring to carry from the colonies to those ports, any dyeing-wood whatever, indigo, cotton, silk, bees, or myrtle-wax, flax-seed, naval stores, furs, skins or peltry, hides, provision, grain, flour, bread or biscuit; whale-oil, blubber, bone, or any other fish-oil, or tallow, or candles, with an exception perhaps to mirtle and spermaceti candles, the government could not be too strict and watchful to restrain them. Under proper regulations, the rum of the northern colonies should be carried to Africa, and the sale of it to the French on the banks of Newfoundland encouraged, if such vent could be procured, as we should thereby reap at least some share even of the French Fishery.

In the above revision of, and the proposed regulations for the colony trade, as connected with that of Europe, it will be seen that all mention of East India goods is purposely omitted. I think a special measure might be contrived of supplying the colonies with East India goods, in a way that would effectually put a stop to that contraband trade, by which it is complained they are at present supplied, in a way by which one of the greatest marts in the world, with every attendant

tendant advantage to the British general commerce, and the special interest of the East India trade might be established.

If measures were at this juncture taken, between the government and the East India company, so that an East India ship might annually stop at some island in the West Indies, the traders, not only of the West Indies, but of North America, would supply themselves with every advantage at such mart, not only for their own proper consumption, but also for a trade of the greatest extent; and this mart, in return, would be to the East India company, the collector of all the surplus silver of America, and perhaps even of some of the gold and ivory of Africa also. The extensive advantages of this measure cannot but be seen; nor would this any way interfere with that supply with which the East India trade, by way of the Manilla's, furnishes the Spanish West Indies, so far as our East India company may be supposed to be concerned, but would, in other respects, open a better channel of trade between the East and West Indies, which our company must command. The difficulties in the execution lie in securing to government the revenue that should arise from the duties duly paid by this trade, and in securing the company against the perversion :
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of this trade to the profit of their officers and servants.—If some of the islands surrendered to us, as the Granadas, or of the neutral islands, were made the place of this mart, with a grant of lands to the company, at the same time that a profit might derive hence to the company, the collateral good advantage to the publick would arise, of having created a very beneficial settlement.

In the same manner, some revision of the state of the trade of the colonies of the several maritime powers amongst each other will be necessary.—The laws and ordinances of these do in general prohibit all trade of foreign colonies with their own ;—and yet, without some such trade as supplies the Spanish provinces with British goods and provisions, as supplies the British colonies with Spanish silver, as supplies the French islands with British lumber, fish, provisions, horses, and live stock, as supplies the British colonies with French molasses, the trade and culture of these colonies would be greatly obstructed and impaired ; and yet notwithstanding this fact, our laws of trade, by an impracticable duty, extend to the prohibiting the importation of French Molasses into our colonies.—If the government, under this law, could prevent effectually this importation, not only into the northern colonies,

lonies, but into the British isles also, the reward of that pains would be the destruction of a beneficial branch of trade, perhaps of driving the British American distillery into the French, Dutch, or Danish isles, or of forcing the French, contrary to their own false policy, into a profitable manufacture of that produce which they now sell as refuse materials. I need not point out here the very essential change that this would make in the colony trade.—On the contrary, it is the duty of government to permit, nay even to encourage, under proper regulations, these branches of trade ; in the first place, in order to extract out of the foreign colonies, to the benefit of the British commerce, as much as possible the profits of these colonies, and which is more material, in order to create a necessary dependance in the trade and culture of those colonies for their supplies on the British commerce.—When it is remembered that the law, which lays a duty equal to a prohibition, on the importation of French molasses into the British colonies, was obtained at the solicitation of the British isles, it will be seen, that the obtaining this law is not so much meant to prohibit totally the introduction of French molasses into the British trade, as to determine a struggle between the West India and North American traders, who should have the profits

sits of it. And thus, from the predominant interest of these partial views, has government been led to embarrass the general courses of its trade.—But as the West India traders see that this law has not, never had, and never will have the effect proposed, they will be better reconciled to its ceasing; and as government must now, after the experiment, see the false policy of it, there is no doubt but that it will cease, so far as to reduce the duty to a moderate and practicable charge, such as will be paid, and such as will raise to the crown a very considerable revenue thus paid.

As the French isles, since the surrender of Canada and Louisiana, must depend intirely for their supplies of lumber, staves heads, provisions, live stock, horses, &c. on the British colonies, immediately exported from thence to those isles, unless by some means supplied from markets created at New Orleans and the island of St. Peter, it will be the duty of government to keep a watchful eye to the formation and extent of these markets;—so at least, if they be permitted, as to have the command of them, and so as to prevent their being, to the French traders, the means of supplying the Spanish markets also, as well as their own.

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Some revision also will be necessary in the laws about naval stores, especially that respecting the masts. The present law, under an idea of preserving the White Pine or mast trees, directs, That no White Pines shall be cut or felled within the limits of any township, if not actually private property.—This part of the law arises from a mistaken apprehension of a township, there being no lands within such but what are private property.—2dly, That no Pines out of a township, of the dimensions of 24 inches and upwards, diameter, at the height of 20 inches from the ground, shall be felled.—This part of the law is *felô de se*.—Those who find their profits in cutting down these trees for loggs or making shingles, &c. or who know the embarrassments which would arise to their property, if they should ever apply for a grant of these lands, by letting such Pine-trees, the property of the crown, grow there, never (if they have not other means to evade this law) will permit these Pines to come to *this dimension* which makes them royal property. The false policy of this law, and the defects in the establishment of an office of surveyor-general of his Majesty's woods, will soon, if not obviated, be felt in the scarcity and price of masts, which will be the effect of it.

it. The necessity of their going a great distance from the rivers for the masts has already taken effect, and the case of there being none within any practicable distance will soon follow. The navy-office finding that their mast ships come regularly hitherto to England, cannot entertain any fear of such want, and it will be the interest of others to suppress and contradict this fact; yet it is a fact, and will be soon known in its effects. On the contrary, if it is considered how disproportionate a value the price of the Pine-tree growing bears to the price of the mast when brought in the middle of winter, over the snow, with 70 or 80 yoke of oxen to the water-side; if, instead of aiming to make these trees, thus growing, *royal exclusive property*, the crown was not only to permit a free mastling in lands not granted, and to make the mast-trees of all dimensions, *private property* on lands actually granted, but also (as is done in other cases of naval stores) to give a bounty besides the price, to the person who should bring down any such masts to the water-side, it would have an immediate effect in supplying the crown with masts at a cheaper rate, and in the preservation of these trees, thus become a branch of trade.

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I have not gone into the thorough examination of these subjects above-mentioned, nor have I pointed out, in all their consequences, the effects that this or that state of them would have. I have only pointed them out as worthy the attention of government; and, I am sure, whenever government takes them under consideration, they will be better understood than any explanation of mine can make them.

Were some such arrangements taken for a revision and further establishment of the laws of trade, upon the principle of extending the British general commerce, by encouraging the trade of the colonies, in subordination to, and in coincidence therewith, the trade of the colonies would be administered by that true spirit from whence it rose, and by which it acts; and the true application of the benefits which arise to a mother country from its colonies would be made. Under this spirit of administration, the government, as I said above, could not be too watchful to carry its laws of trade into effectual execution. Some of the laws of trade direct the prosecution and punishment of the breach of them to take its course in the courts of vice-admiralty. And it has been thought, by a very great practitioner, that if the laws of trade were regulated, on a practicable application
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of them to the state of the colony trade, that every breach of them should be prosecuted in the same way, by an Advocate appointed to each court from Great Britain, with a proper salary, who should be directed and empowered to prosecute in that court, not only every trader that was an offender, but also every officer of the customs, who thro' neglect, collusion, oppression, or any other breach of his trust, became such : but I own, was it not for the precedent established already by some of the laws of trade, I should doubt the consistency of this measure with the general principle of liberty, as established in the trials by a jury in the common law courts.—Under the present state of those laws, and that trade, whatever be the course of prosecution, there is great danger that any severity of execution, which should prove effectual in the cases of the importation into the colonies of foreign European and East India goods, might force the Americans to trade for their imports, upon terms, on which the trade could not support itself, and might become in the event a means to bring on the necessity of these Americans manufacturing for themselves. Nothing does at present, with that active and acute people, prevent their going into manufactures, but the proportionate dearness of labour, as referred to the terms on which they can import; but encrease the price of

their imports to a certain degree, let the extent of their settlements, either by policy from home, or invasion of Indians abroad be confined, and let their foreign trade and navigation be, in some measure, suppressed;—their money-currency limited within too narrow bounds, by a total prohibition of paper-money;—this proportion of the price of labour, considering the length of the winters, when no labour can be done without doors, and considering how many hands will be taken from navigation and settlements, together with the want of money, the means of purchasing, will much sooner cease to be an object of objection to manufacturing there, than is commonly apprehended. And if the colonies, under any future state of administration which they see unequal to the management of their affairs, once come to feel their own strength in this way, their independence on government, at least on the administration of government, will not be an event so remote as our leaders may think, which yet nothing but such false policy can bring on. For, on the contrary, put their governments and laws on a true and constitutional basis, regulate their money, their revenue, and their trade, and do not check their settlements, they must ever depend on the trade of the mother country for their supplies, they will never establish manufactures, their hands

hands being elsewhere employed, and the merchants being always able to import such on terms that must ruin the manufacturers, unable to subsist without, or to unite against the mother country; they must always remain subordinate to it, in all the transactions of their commerce, in all the operation of their laws, in every act of their government;—and to repeat what I have already said, as they will thus become conscientiously in each individual, so will they constitutionally, in their respective governments, subordinate, attached, and obedient to the mother country, and to the supreme government thereof;—and the several colonies, no longer considered as demesnes of the crown, mere appendages to the realm, will thus become, united therein, members and parts of the realm, as essential parts of a one organized whole, *the commercial dominion of Great Britain*. The taking leading measures to the forming of which, ought, at this juncture, to be the great object of government.

The END of the FIRST PART.